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Assessment of salvage award under Lloyd's Open Form [LOF]

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ASSESSMENT OF SALVAGE AWARD UNDER LLOYD’S OPEN FORM

By

XU JINGJING
China

A dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the award of the degree of

MASTER OF SCIENCE
in
SHIPPING MANAGEMENT

2000

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DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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ABSTRACT

Title of Dissertation: Assessment of Salvage Award under Lloyd’s Open Form
Degree: MSc

The dissertation is a detailed study of the assessment of salvage awards under different Lloyd’s Open Form, with particular attention paid to the process of development of the assessment system under LOF.

The basic concept of the definition and subject of salvage, as well as the general principle known as “No Cure-No Pay” is examined in order to set up a basis for further discussion.

The underlying assessment of salvage remuneration, namely assessment under Article 13 of 1989 Salvage Convention, which is incorporated in LOF, is discussed with the analysis of the 10 criteria of this Article that have to be taken into account when fixing salvage awards.

The background to the 1989 International Salvage Convention and its significance is briefly explained. The creation of the special compensation regime is outlined, and a brief overview of the “safety net” provision of LOF 1980 is also included. The Special Compensation assessment is then discussed, with special emphasis on the problems which arose in the practical application of the regime.

A detailed study is made of the SCOPIC Clause, beginning with the introduction of the background of this new clause. The 15 sub-clauses are itemized and examined. Then some comments and recommendations are given.

For the purpose of better understanding, each assessment regime is followed by one or two relevant case studies.

KEYWORDS: LOF, Assessment, Salvage Award, Special Compensation, SCOPIC.
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<table>
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>CMI</td>
<td>Comite Maritime International</td>
</tr>
<tr>
<td>H&amp;M</td>
<td>Hull and Machinery</td>
</tr>
<tr>
<td>IMO</td>
<td>International Maritime Organisation</td>
</tr>
<tr>
<td>ISU</td>
<td>International Salvage Union</td>
</tr>
<tr>
<td>ISU5</td>
<td>Salvage Guarantee Form ISU5</td>
</tr>
<tr>
<td>IUMI</td>
<td>International Union of Marine Insurance</td>
</tr>
<tr>
<td>LOF</td>
<td>Lloyd’s Open Form of Salvage Agreement</td>
</tr>
<tr>
<td>MODUs</td>
<td>Mobile offshore drilling units</td>
</tr>
<tr>
<td>P&amp;I Club</td>
<td>Protection and Indemnity Club</td>
</tr>
<tr>
<td>SC</td>
<td>Swedish Club</td>
</tr>
<tr>
<td>SCOPIC</td>
<td>Special Compensation P&amp;I Clause</td>
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<td>SCR</td>
<td>Shipowner’s Casualty Representative</td>
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CHAPTER I
INTRODUCTION

Salvage is an ancient concept in maritime law and practice. While it can be traced back to Roman times, the modern international law of salvage is largely based on convention law and heavily influenced by English admiralty decisions developed over the last few centuries. Salvage may be carried out under the terms of a contract. Contractual terms may be agreed prior to the commencement of salvage services, during the course of such services, or even after the services have been completed. One of the advantages of having an agreed form of contract is that in an emergency no time need be lost in agreeing to the terms under which the salvage services are provided. If no contract has been entered into, a salvage claim for the saving of property may be pursued under the customary maritime law.

Salvage operations are carried out in virtually all the seas of the world. There are several courts and arbitration systems available to determine the quantum of a salvage award. For example, Japan, Russia, China and Turkey have their own standard contracts of salvage that are used sometimes. But the most widely used standard form of salvage contract is the Lloyd's Open Form of Salvage Agreement (universally known as Lloyd’s Open Form, or LOF) that incorporates the principle of "No Cure-No pay". During the past 20 years some sixty percent of salvage services have been carried out under Lloyd’s Open Form and in the last 10 years, LOF awards expressed as a percentage of total salved values have varied between 4.8% and 13.1%. ("ISU Bulletin" 1999)
Lloyd’s Open Form has been in use for over a hundred years. The first modern text of this agreement was adopted in 1892 and approved by the Committee of Lloyds. Following the revisions that were approved in 1908 the agreement was given the name by which it is known today. Since then, various further revisions have taken place over the years. There have been nine revisions; the current edition is LOF 95, adopted in 1995. An LOF 2000 is in the process of being prepared and is expected to be released for use soon.

The purpose of the first LOF in 1908, as is now, was to ensure that salvors received proper but not disproportionate awards for their services regardless of where the salvage operation took place. Prior to 1980, the remuneration of salvors under LOF was determined strictly on the principle of “No Cure-No Pay”. However, with technological advancements in the shipping industry and the increase of marine pollution, concerns emanated from various quarters regarding the salvors’ remuneration in pollution casualties. A salver could exert strenuous efforts to protect the environment by preventing pollution but could well be left unrewarded if he did not succeed in salving the ship or cargo. It was feared that salvors would have little incentive to attempt to avert or minimise pollution if the prospects of salving the ship and thereby earning a reward appeared to be remote.

In an effort to meet this difficulty, a new form of salvage agreement known as LOF 1980 was introduced. This contained a deviation from the principle of “No Cure-No Pay” in the form of a “safety net” provision. It dealt with laden oil tankers. The LOF 1980 was the most significant change in the historical development of LOF and served as an example of how it has moved ahead of the existing law.

During the 1980’s not only the salvage community, but the international community at large became increasingly concerned with protecting the environment against oil
pollution and other forms of harmful substances. This resulted in the articulation of the 1989 Salvage Convention. Of particular significance is Article 14 of the Convention which provides for payment of “special compensation” to salvors in the event the environment is threatened by pollution. But the convention did not come into effect immediately because it required ratification by a minimum number of contracting states. Nonetheless, several of its terms were incorporated into a new version of LOF, namely, LOF 1990. This was a further departure from the "No Cure-No Pay" principle following the new convention law. The key to the new agreement was to replace the “safety net” with the “special compensation” regime for salvage operations in respect of a vessel which by itself or its cargo posed a threat of damage to the environment.

Unfortunately, Article 14 of the 1989 Salvage Convention has proved somewhat unwieldy to operate in practice. This experience has largely been manifested in Lloyd’s Open Form cases. The problems are in the provisions themselves. For example, it is unclear as to what exactly is meant by expressions such as "threat", "substantial damage" and "coastal waters" in the convention. Other problems include the difficulty of assessing the amount of special compensation; the debate over what is meant by "fair rate" and the size of the uplift under Article 14.2. This has resulted not only in time-consuming and expensive arbitration necessitating the appointment of numerous experts, but also in some confusion as to when a situation moves from the purview of hull underwriters under Article 13 to that of the P&I Clubs under Article 14. As we know, when salvage was purely on the basis of “No Cure-No Pay” and had no connection with pollution, issues were relatively simple to handle. Hull underwriters indemnified shipowners for ship’s share of salvage; the P & I Clubs had no role to play. With LOF 1980, the P & I Clubs became involved because the concept of the “safety net” was introduced. It was the P & I Clubs’ business to indemnify the shipowners at least to certain limits of liability. Then their involvement was substantially extended by Article
14 of the 1989 Salvage Convention which led to a series of new concerns not addressed by the Convention.

In an attempt to resolve these problems there have been recent discussions between the major groups concerned, i.e., the International Group of P&I Clubs, the International Salvage Union (ISU) and underwriters for both ship and cargo. What has emerged from these deliberations is the so-called Special Compensation P&I Clause (SCOPIC), which is designed to be incorporated into Lloyd's Open Form if the parties want it. The wording has now been approved by all the principal industry bodies and has been published by Lloyd's in the form of an addendum for incorporation into LOF 1995.

The SCOPIC clause itself has 15 sub clauses and 3 appendices. It governs the relationship between the shipowners, cargo owners and the salvors. The position of the P&I Clubs and the property underwriters is governed by two Codes of Practice, the one between the ISU and the International Group of P&I Clubs and the other between the International Group and the property underwriters.

The clause does not seek to affect any changes to Article 14 or awards but simply provides an alternative, more convenient and viable method of assessing special compensation. The main elements contained in this clause are:

1. The terms of the SCOPIC Clause may be invoked by the salvors;
2. Special compensation is assessed in accordance with rates for equipment and personnel based upon a tariff agreed in advance plus a standard bonus of 25 per cent;
3. Property salvage will continue to be assessed according to Article 13;
4. Special compensation will only be paid to the extent that it exceeds the Article 13 award, even if that award is not collected;
5. If the Article 13 award exceeds the special compensation calculation, the Article 13 award will be reduced by 25 per cent of the difference between that figure and the...
SCOPIC calculation. This is intended to discourage automatic declarations under the new clause when the circumstances of the incident do not justify it;

(6) Owners will be able to terminate, subject to 5 days notice;

(7) Owners will be entitled to appoint a casualty consultant to attend the salvage operation;

(8) There will be provision for the salvor to be secured by the P&I Club within 48 hours of the declaration.

Overall, most people are satisfied with SCOPIC as it resolves some problems in the practical application of Article 14. Recent cases involving SCOPIC indicate that the Clause is reasonably satisfactory and working well.

The purpose of this dissertation is to provide an insight into developments in the field of assessment of salvage awards under Lloyd's Open Form. As LOF has incorporated some provisions of the 1989 International Salvage Convention, first, in Chapter Two, the basic principles and concept of salvage under the Convention will be explained. The underlying assessment of salvage remuneration, namely assessment under Article 13, will then be discussed in the next Chapter. The background to the 1989 International Salvage Convention and its significance will be briefly explained in Chapter Four. The Special Compensation assessment and the problems or difficulties which arose in the practical application of that regime will also be examined in this Chapter. The new development in LOF award assessment, i.e., the SCOPIC Clause and some recommendations will be addressed in Chapter Five. Finally, a summary and some conclusions derived from the analysis will be presented in the last Chapter.
CHAPTER II
BASIC CONCEPT AND GENERAL PRINCIPLE OF SALVAGE

2.1 Definition of Salvage

Salvage is the preservation by a voluntary salvor of a ship, cargo and certain other classes of property at sea or in other waters from danger.

According to Brice, (Maritime Law of Salvage, 1993) “a right to salvage arises when a person acting as a volunteer (that is without any pre-existing contractual or legal duty so to act) preserves or contribute to preserving at sea any vessel, cargo, freight or other recognised subject of salvage from danger.”

Article 1 of the International Convention on Salvage 1989, however, defines “salvage operation” as: “any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever”. In the absence of a contract therefore, there are four requirements which a salvor has to meet before he is entitled to a salvage award from a court competent to exercise maritime jurisdiction.

A fundamental requirement is that the property should be a recognised subject of salvage. In addition, there are three basic ingredients of customary salvage which must be present. These are danger, voluntariness and success. These three ingredients are discussed in detail below.
2.1.1 Danger

The property concerned must have been preserved from danger at sea. However, the 1989 Salvage Convention extends the right to claim salvage to “any other water whatsoever”. The subject of salvage includes vessels, cargo or any other property. It could be deemed as salvage in the case that either vessel or its cargo is in danger without the essential condition that both of them are in danger.

What sort of danger does the law require in order to turn an act of assistance onto a salvage service? Clearly the danger must be a real one, and must not only exist in the fancy of those to whom the service is rendered.

However, there exists difficulty in determining what is to be regarded as danger for the purposes of salvage; for a ship may be in varying degrees of danger. It can not be ignored that to lay down too strict rules would discourage salvors as the salvors would hesitate whether it is in real danger, so that the best opportunity of salvage would be lost. Again, to be too liberal would incite persons to foist salvage services on ships which do not require them and thus inflict more loss than benefit on the ship- and cargo-owners; for the right to an award does not depend on the consent of those in charge of the property salved. The test which has been applied is whether a reasonable and prudent master, if offered assistance would have accepted the offer. Obviously, the judgement of the risk from the master of the distress ship is a powerful proof of whether there exists the real danger.

2.1.2 Voluntariness

The salvors must have been “volunteers” and under no pre-existing duty to act. The law of salvage only applies when there is no pre-existing duty on the part of the salvor to
come to the assistance of the distress ship. This duty may spring either from a contact between the salving and the salved vessels or from an official duty on the part of the salvors. Where such duty exists the service is not voluntary. For example, the master and the crew who have duty to salvage their vessel and cargo can not get award. One more example, if the collision happen, the master and crew of one vessel have duty to salvage the other vessel, so that they can not get award.

2.1.3 Success

The services must succeed either wholly or in part. There must be a causative link between the salvage operation and the salvage result. It is because of the salvage service rendered by the salvor that the whole or part of the subject of salvage is saved. If there is no salved value, there will be no salvage award, namely the "No Cure-No Pay" principle will apply. This requirement has now been diluted by the introduction of Article 14 of the 1989 Convention which has the effect of entitling a salvor to payment if he has carried out salvage operation in respect of a vessel which by itself or its cargo threatens damage to the environment and has failed to earn a reward under Article 13 at least equivalent to the special compensation assessed in accordance with Article 14.

2.2 Subject of Salvage

Salvage can only be claimed for saving certain types of property. Traditionally, they included a vessel, her equipment, cargo, and freight. The extent to which other things are included varies between legal systems. For example, the United Kingdom allows for the salvage of wrecks and aircraft, but not certain types of buoys. However, the general spirit of the 1989 Salvage Convention was to make its scope as broad as possible. Hence, the definitions of vessel and property in Articles 1(b) and (c) are very wide:
(b) Vessel means any ship or craft, or any structure capable of navigation.
(c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.

2.2.1 Vessel

The definition of vessel is reasonably clear and covers ships, barges, and hovercraft. The addition of the word "structures" is helpful, as it covers floating cranes, floating dry docks, and semi-submersible heavy lift barges. Prima facie oil and gas rigs are covered, unless Article 3 (containing exclusions) which is shown below is taken into account. The word "any" in Article 1(b) was added to make it clear that the word "navigation" was not meant to qualify "ship" or "craft".

Article 3: This convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

The effect of incorporating Article 1(b) in the LOF 1990 will be to apply the contractual arbitration regime to such vessels and structures, although it may be that the salvor will not always be able to claim that there is a salvage in the full sense of customary maritime law. Wreck and derelict are also included.

In The Gas Float Whitton (No. 2) ([1896] P. 42. C.A.) “wreck” was held by the court to fall within the definition of “vessel” or “property”. Derelict means a ship which is abandoned and deserted at sea by her master and crew without any intention on their part of returning to her. It does not include a vessel which is left by its master and crew
temporarily with the distinct intention of returning to it. Therefore, in practice, it is very
difficult for the salvor and master to prove that the vessel was a derelict.

2.2.2 Cargo

Cargo, being the goods or merchandise carried by a ship, is another subject of salvage,
no matter whether it is on board, floating in the water or sunk at the bottom of the sea.
Flotsam, Jetsam and lagan are also included.

Flotsam is when a ship is sunk or otherwise perished, and the goods
float on the sea. Jetsam is when the ship is in danger of being sunk
and to lighten the ship the goods are cast into sea, and afterwards,
notwithstanding, the ship perish. Lagan is when the goods which are
so cast into the sea, and afterwards the ships perishes, and such
goods cast are so heavy that they sink to the bottom, and the
mariners, to the intent to have them again, tie to them a buoy or cork,
or such other thing that will not sink, so that they may find them
again. (Sir Henry Constable’s Case, Coke Rep., Part V, 106a, 106b)

For the cargo to become a subject, it is not relevant whether the vessel which was
carrying it, is herself saved or not. Even if only the cargo is saved, the salvor will be
entitled to a reward. Nowadays cargo is frequently transported in containers and claims
for salvage are frequently made both as respects the cargo in the containers and as
respects the containers themselves. Cargo is now frequently carried in ships or structures
which are put together and dismantled as required, e.g. lash ships, barges which are so
constructed as to be affixed one to the other with a pusher tug and the like. These are all
capable of being the subject of a salvage claim.
2.2.3 Freight

As a preliminary point, it can be seen that article 1(c) has retained the concept of freight being a subject of salvage. Although freight is intangible, it should be noticed that it is only freight at risk that can be salved. What must usually happen is for the ship to be brought to her contractual destination in order to earn freight payable on delivery (which would otherwise be lost). If freight is payable in advance, and is not dependent on delivery, then it is not at risk and cannot be saved.

2.2.4 Platforms and drilling units

The Article 3 exclusion of the 1989 Salvage Convention applies to the three main types of structures now being used, be they platforms permanently installed on the seabed, semi-submersibles that can raise or lower legs to or from the seabed, or mobile offshore drilling units (MODUs). However, there may be circumstances when even platforms or drilling units could be salved. While in transit to the place of operation, such rigs would seem to fall within the general definition of vessel or property. Further, a platform or unit may be engaged in exploration without, at the particular moment of distress, having any form of physical attachment to the seabed.

2.3 No Cure-No Pay Principle

A fundamental concept of salvage is that the “salvor” should have the right to ask for an appropriate salvage award after the operation has been successfully completed, as the “salvor” himself takes a high risk when intervening in the casualty situation to do the salvage job. This basic principle of salvage and salvage law aims at encouraging people to save life, the ship and property in danger. This right to a reward is based on natural
equity, which allows the salver to participate in the benefit conferred to the shipowner, the ship itself and the ship’s cargo.

The legal principles of salvage are of ancient origin, having been recognised by Greek and Roman law. They were refined in a series of decisions in the Admiralty Court in England in the period 1600 to 1900, and finally codified in the 1910 Convention for the Unification of Certain Rules of Law Respecting Assistance and Salvage at Sea which was adopted in September 1910 following preparatory work undertaken by the Comité Maritime International (CMI). Because of a lack of or diversification in rules concerning salvage at that time, this convention has been ratified by nearly all the countries in the world. Therefore, it can be believed that this convention was of great significance to harmonise and uniform the salvage regime.

This convention followed ancient tradition and gave formal recognition to the principle that a salvage reward should depend upon success of the salvage operation, which is known as the “No Cure-No Pay” principle. This principle can be found in Article 2:

**Every act of assistance or salvage which has had a useful result gives a right to equitable remuneration.**

No remuneration is due if the services rendered have no beneficial result, …

LOF is the most widely used “No Cure-No Pay” salvage contract. In return for salvage service, the salver receive a proportion of the “salved value” (the value of the ship, its bunkers and cargo). Traditionally, reward depends upon success and the recovery of property.
In *The Tojo Maru*, ( [1972] A.C. 242; [1971] 2 W.L.R 970) Lord Diplock held (in regard to a Lloyd's Form Agreement) that “the first distinctive feature is that the person rendering salvage services is not entitled to any remuneration unless he saves the property in whole or in part. This is what is meant by ‘success’ in cases about salvage.”

The 1989 Salvage Convention similarly provides by Articles 12.1 and 12.2:

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.

In some cases (for example in the case of badly damaged vessels) it may be that success is achieved only in the sense that the vessel is brought to an agreed place of termination of the salvage services: however, due to her condition, she has no value to her owner. It is thus not possible to have a salvage reward, there being no salved fund.

Under the principle of “No Cure-No Pay”, difficulties sometimes arise in cases where several sets of salvors have taken part in salvage work. It may, for example, be doubtful whether the first set of salvors to assist the distressed vessel were really instrumental in saving it. The position is now governed by the rule laid down by Lord Phillimore, in *SS Melanie v. SS San Onofre* ([1925] A.C. 246 at p. 262) as follows:

Success is necessary for a salvage award. Contributions to that success, or as it is sometimes expressed meritorious contributions to that success, give a title to salvage reward. Services, however, meritorious, which do not contribute to the ultimate success, do not give a title to salvage reward. Services which rescue a vessel form one
danger but end by leaving her in a position of as great of nearly as
great danger though of another kind, are held not to contribute to the
ultimate success and do not entitle to salvage reward. In considering
these questions wherever the service has been meritorious, the court
has lent towards supporting a claim for salvage.
3.1 General Principle

The quantum of a salvage award is assessed at the discretion of the court on arbitral tribunal hearing the matter. In practice, intuition and experience play a decisive role in the assessment of a proper salvage award. The court or arbitrator does not assess salvage reward by reference to a proportion of the fund. However, it will have regard to the value of the salved property and will not award an amount in excess of the value. Under LOF, the salvage award is arbitrated (except in the case of settlement) by a single arbitrator who is appointed by Lloyds from a panel of arbitrators who are QC's and who have spent many years gaining the knowledge required by representing different parties in many salvage arbitrations.

The basis for assessing an award is set out in Article 13 of the 1989 Salvage Convention. The arbitrator is to take account of not only the services to the salved property and its value but also of other factors such as "the skill and efforts of the salvors in preventing or minimising damage to the environment."

In *The Industry* case ((1835) 3 Hagg. 203), Sir John Nicholl held that:
The amount of remuneration must depend on all the circumstances. It is not a mere question of work and labour, not a mere calculation of hours, though time is undoubtedly an ingredient but there are various facts for consideration— the state of the weather, the degree of damage and danger as to ship and cargo, the risk and peril of the salvors, the time employed, the value of the property; and when all these things are considered, there is still another principle - to encourage enterprise, reward exertion, and to be liberal in all that is due to the general interests of commerce, and the general benefit of owners and underwriters, even though the reward may fall upon an individual owner with some severity.

Subject to Article 13 of the 1989 Convention, the criteria that have to be taken into account when fixing salvage awards are as follows:

(a) the salved value of the vessel and other property;
(b) the skill and efforts of the salvors in preventing or minimising damage to the environment;
(c) the measure of success obtained by the salvor;
(d) the nature and degree of the danger;
(e) the skill and efforts of the salvors in salving the vessel, other property and life;
(f) the time used and expenses and losses incurred by the salvors;
(g) the risk of liability and other risks run by the salvors or their equipment;
(h) the promptness of the services rendered;
(i) the availability and use of vessels or other equipment intended for salvage operations;
(j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

Article 13.1 lists 10 criteria, it begins by providing that “the reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria…” The use of the word “shall” makes it clear that each of the criteria must be taken into account in every case in fixing the award.

3.2. Analysis of the Criteria of Article 13 of the 1989 Salvage Convention

It is worthwhile examining the criteria listed in Article 13.1 individually. At the outset it must be recognised that the expressed concept of “encouraging salvage operations” is to be taken into account in every case. As recommended by the Salvage Working Group:

…tribunals involved in the assessment of remuneration for salvage services under the terms of International Salvage Conventions and "No Cure-No Pay" contracts incorporating the terms of such Conventions should, when assessing the award, take particular account of the decline of the salvage industry identified in this report and ensure that they give sufficient encouragement to a dedicated professional salvor. (“Salvage Working Group Report” 1993)

It should be noted that the order in which the criteria appear in Article 13.1 is irrelevant in terms of the fixing of the reward. Nevertheless, the set order is useful in considering each criterion separately to determine its meaning and purport as well as its relevance and impact in a particular case.
(a) The Salved Value of the Vessel and Other Property

Compared to the other criteria listed in Article 13, the value of salved property is the most material one. According to ISU statistics, during the 20 years to 1998 the aggregate value of salved property (ship, cargoes and bunkers) totalled USD 21.39 billion. Some 60% of those services were carried out under LOF "No Cure-No Pay" terms. However, recent years have seen a substantial increase in the overall level of awards. In the last 10 years LOF awards expressed as a percentage of total salved value have varied between 4.8% and 13.3%. For ISU members, it varied between 5.5% and 21.2%. This recent rise in the quantum of awards stems partly from the perceived decline of the international salvage industry which led to the report of the Salvage Working Group in 1993 mentioned above.

In Article 13.2 it is clearly stated that payment of a reward fixed in accordance with Article 13.1 “…shall be made by all of the vessel and other property interests in proportion to their respective salved values.” In this context, Brice states as follows:

Assume for example that a badly damaged vessel is aground and is refloated after great exertion and exertion by the salvor. The vessel herself proves to have a low salved value. However, assume the vessel carried a parcel of cargo which was of great value and which was lightened from her on the first day of a lengthy salvage operation and placed in safety at little expense. In such a case it is well established that the salved property contributes to this salvage reward pro rata to salved values: this principle is what is reflected in Article 13.2. Nevertheless it is right in assessing the reward to take into account that the prolonged exertion and expense of the salvors contributed little to the salving of the valuable parcel of cargo and conferred little
benefit on the vessel owner, the salved vessel having a low salved value. Any reward may properly reflect this fact. (Brice, 1993, pp.152-153)

It should be noted that leaving aside the question of special compensation under Article 14, Article 13.3 provides that the reward, exclusive of any interest and recoverable legal costs that may be payable thereon, “…shall not exceed the salved value of the vessel and other property.”

(b) The Skill and Efforts of the Salvors in Preventing or Minimising Damage to the Environment

This is a new criterion in the 1989 Salvage Convention which did not exist in the 1910 Convention. It deals with the threat of environmental damage. It is an important new provision as was recognised by Clarke J. in his trial decision of The Nagasaki Spirit ([1995] 2 Lloyd’s Rep.44 (H.C)) where, after referring to the provision, he said:

…thus where the efforts of the salvor prevent or minimise damage to the environment and the salvage services are successful, he will obtain a large salvage award against ship and cargo than he would otherwise have done. Moreover, there is no reason why an award should not be substantially larger in appropriate cases.

This criterion is concerned with the assessment of a conventional salvage reward but not with an award under Article 14 of “special compensation” which may take into account the skill and efforts of the salvors in preventing or minimising damage to the environment in assessing the increment allowable under Article 14.2.
(c) The Measure of Success Achieved by the Salvor

This criterion is concerned with “the measure of success” achieved by the salvor. It goes further than the basic concept that achieving or contributing to “success” is a prerequisite to entitlement to a salvage reward. That is reflected in Article 12. Article 13.1, on the other hand, assumes that a “useful result” or “success” has been achieved. Brice explains it best in the following words:

Assume a case in which notwithstanding the great exertions of the salvor very little benefit is conferred. Consider for example that a ship is on fire at anchor in a port and that had the fire been left to burn the ship would have remained afloat at anchor as and where she was but that the extent of damage would have led to her being declared a “constructive total loss”.

If, notwithstanding the efforts of the salvor in extinguishing the fire, the damage is such that she is still declared a “constructive total loss” it might be said that there was “no useful result” contemplated by Article 12. More probably and in most cases some property would have been saved from burning, smoke or heat damage so that the “scrap value” of the vessel is somewhat greater than it would have been had the fire been left to burn itself out. However, the “measure of success” obtained by the salvor in such a case is plainly limited and this fact should be reflected in the assessment of the reward to the salvor. Likewise, if the “measure of success” is great in that a fire that would have spread throughout a ship so as to cause extensive loss or damage to her and her cargo is extinguished by the salvor then that
“measure of success” is great and will be reflected in the assessment of the award. (Brice, 1993, p.154)

(d) The Nature and Degree of the Danger

This criterion distinguishes between the “nature” and “degree” of the danger. The circumstances of danger which may have to be considered in assessing the salvage award are infinite in their variety. It may be a case of immobilisation or one of destruction, e.g., by fire, explosion, stranding or collision. The danger may be immediately effective or its effect may be over a long term. (Brice, 1993, p.154)

The two primary considerations are the risk of loss of time and the risk of physical loss. The former is essentially a pecuniary risk reflecting the fact that a ship is immobilised, both the vessel and any cargo are anfractuous. The latter involves an ex post facto assessment of the risk of loss or damage in the absence of assistance. In both cases, all relevant circumstances must be considered. These would include the particulars of the salved ship, its condition as regards seaworthiness and motive power. It would also extend to the number, availability, efficiency, capacity and morale of the crew. The peculiarities of the locality, the season of the year at which the services are rendered, and, if the weather at the time is not heavy, the chance of its becoming so, would be other parameters. The nature of the cargo whether it is perishable or dangerous would be yet other factors. (Steel & Rose, 1985, p. 461)

The degree of danger, where danger exists, to property used in the performance of the salvage service, and the value of that property, are elements in the character of the salvage claim which are best considered in connection with each other.
(e) The Skill and Efforts of the Salvors in Saving the Vessel, Other Property and Life

In the case of all salvors, the salvage reward always reflects the skill and knowledge displayed in the performance of the salvage service. As stated by Brice, “The ‘skill and efforts’ of salvors are always relevant. ‘Skillfulness’ and determined ‘efforts’ are always reflected, salved fund permitting, in the assessment of the reward.” (Brice, 1993, p.154) Lack of skill and the slow pace of efforts not exerted with full conviction will usually have the effect of diminishing the amount of the reward. Even if the result is successful, and the efforts of the salvors have not inflicted a quantifiable loss upon the owners of salved property, the reward will be less than it otherwise would have been if the salvor fails to measure up to the skill and knowledge reasonably to be expected of him.

This criterion refers to “…salving the vessel, other property and life”. If a ship is stranded with cargo on board and it has to be refloated after determination of stability and residual strength. The cargo must be discharged into lighters or ashore under abnormal conditions. All such factors must be considered. It must be remembered that the skill and effort of salvors in saving life are taken into account even though no salvage reward is due from those whose lives are saved. Also, under this criterion it is implied that danger to life is a factor in the assessment of danger in the circumstances. (Brice, 1993, pp.154-155)

(f) The Time Used and Expenses and Losses Incurred by the Salvors

There are three factors to be considered under this criterion. Needless to say, “the time used” by the salvors is an important consideration. In a particular instance, the services may be difficult, laborious and lengthy. In another case they may be of short duration and yet highly beneficial, such as in a case where a vessel is towed clear of a lee shore
on which it might have stranded. Another example is where a fire is extinguished. (Brice, 1993, p.155) If the salvage service is perilous, or involves the continued exercise of skill or labour, the length of its duration will enhance the salvor’s reward. But a short service may be a valuable service and thus earn a substantial award. In The General Palmer ((1884) 5 Not.of Cas. 156,159.), the short span of time of the salvage services was pleaded without success in support of a small payment.

If the service does not contain any important element of risk or skill on the part of the salvors, as, e.g., a long but easy towage of a disabled ship by a powerful steamer in favorable weather, the time taken would appear to deserve consideration in the award. However, this should be the case only in so far as it results in an actual expense or a loss of profit to the salvors. (Steel & Rose, 1985, p.469)

In addition, the salvors’ “expenses” are undoubtedly relevant. Notably, the word “expenses” is not defined. It would appear to be mainly concerned with “out of pocket expenses”. In this connection, the basic requirement of encouragement in Article 13.1 may also be relevant. A professional salvage outfit will frequently incur significant and ongoing expenses in maintaining tugs, equipment and stores in a state of readiness to put into action in a salvage operation. This fact of reality is considered in criteria (i) and (j), but there is no reference to “expense” in those criteria. In those two criteria, it would be absurd to ignore such expenditure if “encouragement” is to be fostered and promoted. Be that as it may, that type of expenditure must be recognised to be necessary. (Brice, 1993, p.155)

Thirdly, under this criterion, losses incurred by the salvor should be taken into account by the court or arbitrator. In cases where the salvor’s craft or equipment has suffered damage and the salvor, as a result, has incurred a loss, such a loss is normally taken into account. Indeed, under this criterion it is obligatory to do so. If the court or arbitrator
does not take account of such losses, a reward so assessed will not be much of an encouragement. However, in fixing the award in a particular case the owner of salved property in that case is not obliged pay for all the losses of the salvor in other cases. In the last analysis, if salvors are to be encouraged to continue rendering salvage services in areas where they are needed most, their continued efforts, notwithstanding the potential suffering of losses, should be adequately rewarded.

It is hoped that the court will be mindful of awarding wherever possible, a sufficient sum to salvors to cover the expenses they have incurred and to give them a reasonable additional amount as compensation for their services. However, if the salved values are too low to permit a court or arbitrator to award a reasonable amount for salvage services, and at the same time leave an adequate amount for the property owners, the salvors may find themselves going out of pocket. This element of risk is taken into account for enhancing awards in cases where, by meritorious service, salvors have salved highly valued property.

(g) The Risk of Liability and Other Risks Run by the Salvors or Their Equipment

Liability under this criterion may arise if, for example, a strict liability regime applies in a jurisdiction where damage has occurred without the salvor’s fault. Suppose without any fault on the part of the salvor, a ship which the salvor is seeking to salve and which is under tow is at risk of sinking. If the vessel in fact sinks, under the regime of that particular state, the salvor could face strict liability for wreck removal. The fact that the salvor was prepared to undertake such risk of liability in preserving the salved property is highly relevant and should be taken into account for the assessment of the reward.

Sometimes, liability may be incurred under an indemnity or guaranty which a salvor may be obliged to provide. For example, a port authority may require that a salvor
provide a written indemnity to cover any loss or damage liable to occur simply as a consequence of the salved vessel entering the port, regardless of any fault on the part of the salvor. The fact that the salvor is willing to provide such an indemnity and exposing himself to potential liability for a sizeable claim is significant enough to be taken into account.

Another consideration under this criterion is “…other risks run by the salvors or their equipment.” Such risks are of a physical kind such as injury, damage or destruction. There may be risks to the salvor’s servants, his craft or equipment in these circumstances. The fact that the salvors were willing to expose their employees, their craft or their equipment to such risks is undoubtedly relevant and should be taken into account in fixing a reward. However, the risks must be reasonable having due regard to the totality of circumstances. (Brice, 1993, pp.156-157)

(h) The Promptness of the Services Rendered

The promptness of the services rendered is another important aspect. Prompt response by a salvor to a distress call should undoubtedly be encouraged and should be taken into due consideration. Where the salvor assembles his crew, craft and equipment without delay is similarly important. On the other hand, where in a particular case lack of promptness is evident, the salvor’s reward should be reduced.

(i) Availability and Use of Vessels or Other Equipment Intended for Salvage Operations

This criterion is particularly relevant to professional salvors or persons claiming salvage who are in the commercial towage business enjoying a certain professional standing. Where such a salvor makes available for use in salvage operations, vessels or other
equipment, it should be taken into account in the assessment of the reward. He may have
craft or equipment available on standby at a salvage station ready for use exclusively or
mainly for salvage operations. Such practice is of immense benefit to the maritime
community; it should be encouraged and such encouragement should manifest itself in
the assessment of the salvage award. It may be that a salvor is primarily engaged in
commercial work but is quite prepared to make his craft or equipment available even if it
disrupts his commercial work. Such practice is similarly worthy of encouragement. It
should be noted that criterion (i) and (j) do not refer only to the vessels or other
equipment actually used in a particular salvage operation but to the salvor’s vessels and
other equipment generally. (Brice, 1993, p.157)

(j) The State of Readiness and Efficiency of the Salvor’s Equipment and the Value
thereof

In most cases this criterion will be linked to criterion (i) in the assessment of the reward.
Under this criterion, three things need to be taken into account. The first is the state of
readiness of the salvor’s equipment. It will apply where the salvor has tugs on standby at
a salvage station ready to be deployed at a moment’s notice on becoming aware of a
casualty. It will also apply where the craft are not on salvage station but are elsewhere in
a state of readiness to depart at short notice in the event of a casualty. Secondly, the
efficiency of the salvor’s equipment needs to be taken into account as well. If a salvor
maintains pumps or compressors ready for use, the fact that such equipment is not only
ready for use but also functions efficiently and is well maintained must be given due
consideration. Similarly, if the craft or equipment fail to operate efficiently, it is likely to
be good cause for a reduction of the reward. Thirdly, the value of the salvor’s equipment
is also relevant in this context. It is normal practice for the market or replacement values
of the salvage tugs or other vessel to be stated in the assessment of a reward. (Brice,
1993, p.158)
There is no particular fixed order of precedence as to the importance of one element \textit{via a vis} another. The assessment in each case turns upon the facts and particular circumstances of that case. There is no doubt that an imminent and high degree of danger, promptness and great skill displayed by the salvor and serious but necessary risks run by him in performance of the service are considerable which contribute towards an enhancement of the award.

3.3 Case Study

For the purpose of better understanding, it is necessary to describe a case, the salvage award of which was arbitrated under the Article 13 of 1989 Salvage Convention. The details of this case were provided to the author by a firm of London solicitors. For reasons of business confidentiality, the name of salved ship, the salvor, and the name of the ports, yards and so on have been changed. The paragraphs quoted below are taken from the written Arbitration Award of the case in question.

**Name of salved ship**

Zam

**Date and place of salvage**

15\textsuperscript{th} October to 26\textsuperscript{th} October 1997. In the approaches to S City to L anchorage, W and N Shipyard

**Description and size of the ship salved**

Container ship "Zam" built in 1990 registered in Cyprus of 30,509 tons gross, 30,684.9 dwt, 202.45x31 metres with 5 holds and fitted with a diesel engine of 16,260 kW.
Nature and amount of cargo salved, if any
11,551.9 tonnes of general cargo in 488x20' and 259x40' containers including 9x40' containers of refrigerated cargo.

Value of the salved property including cargo and freight
Ship sound: USD 20,000,000
Deductions: USD 5,296,986
Ship saved: USD 14,703,014.00
Bunkers: USD 261,149.00
Containers: USD 2,006,062.00
Cargo represented by: --
Waltons & Mores: USD 16,373,052.16
W.K.Webster & Co: USD 1,347,739.09
Clyde & Co: USD 248,392.50
Unrepreseneted cargo: USD 2,277,912.37
Total salved value: USD 37,317321.12

Particulars of the salving vessels, appliances used and their approximate value
a) Salved Vessel "Hujiu3" built in 1976, 3,126 tons gross with two engines of 5,000 BHP. The vessel carries a 10 man diving team, diving and salvage gear and is valued at USD 4 million.
b) Floating crane "Dali" 100x38 metres propelled by engines of 2,000 BHP valued at USD 12 million.
c) Salvage tug "Hua" built in 1972, 999 tons gross with twin engines of 3,800 BHP each valued at USD 1 million.
d) Savage tug "Dep" built in 1979, 1,186 tons gross with engines of 6,000 BHP valued at USD 2.5 million.
e) Savage tug "Hujiu 7" built in 1976, 1,049 tons gross with engines of 2,640 BHP valued at USD 1.5 million.

f) Harbour tug "Hujiu 15" built in 1971, 191 tons gross with twin engines of 1,500 BHP each valued at USD 800,000.

h) & I) Aquamaster harbour tugs "Hujiu 16" and "Hujiu 17" built in 1994 and 1995 of 389 tons gross with engines of 3,400 BHP valued at USD 2.5 and USD 3 million, respectively.

j) & k) Harbour tugs "Hujiu 26" and "Hujiu 27" built 1978 of 190 tons gross with engines 980 BHP valued at USD 200,000 each.

l) Semi-submersible barge "Zhong 1" of 109x30x7.25 metres valued at USD 2.5 million

Hired:

m) Port tug "Hai 24" built in 1989 of 376 tons gross with engines of 4,000 BHP valued at USD 2 million.

n) Port tug "Bao 4" built in 1989 of 388 tons gross with engines of 4,000 BHP valued at USD 2.5 million.

**Nature of the casualty and the services rendered**

Contracting a submerged rock causing flooding of pipe tunnel and engine room and leakage into No. 5 hold.

Dispatching 3 tugs 90 miles and a salvage team, towage of 35 miles to anchorage, anchoring, making preparations to discharge cargo, pumping No. 5 hold, diver's inspection of engine room and closing tunnel door, test pumping in engine room to confirm door only source of leakage, providing and positioning 4x500 tons camels at stern, dewatering engine room and fresh water washing of machinery, providing electrical power and water, preparation for and towage via Beicao anchorage and channel to Waigao terminal a distance of 65 miles, discharge of all cargo, underwater
inspection, ballasting forepeak to lessen aft draft, towage of 55 miles to drydock in Nantong.

**Brief description of the danger and risks from which the property was saved**
Immobilised until professionally assisted. Total loss of reefer cargo and a very low order risk of collision.

**Time occupied in the services**
About 11.25 days.

**Approximate amount of salvage expenses incurred by the salvors**
None relied upon.

**The arbitrator awarded and adjudged that:**
…the respondents do pay to the Contractors for the salvage services so rendered the sum of USD 2,500,000 (two million five hundred thousand United States dollars) together with interest thereon at the rate of 9.8% per annum from the 26th day of October 1997 until the date on which this my award is published by the Council of Lloyd's which sum shall be paid by each of the Respondents in the same proportions as their respective values bear to the total salved value and … any interest payable upon this Award pursuant to the provisions of Clause 11(ii) of the said Agreement shall be at the rate of 9.5% per annum…

(Source: written Arbitration Award)
Reasons

In paragraph 14 to 19 of the Arbitration Award, the reasons are given which are paraphrased below:

14. The "Zam" was immobilised and it was not disputed that she was in need of professional assistance. She was not in danger of sinking or acquiring a deeper draft once the ship's crew had stopped the ingress of water into No.5 hold. She was not likely to go aground as the tidal currents are rotary and the wind directions were various. Immobilisation of a container ship, which with her cargo was of high value, is in itself a significant danger, particularly when a professional salvor is needed and there is no immediate alternative assistance. In addition reefer cargo of a value of about USD 737,589 was at obvious risk of total loss unless power could be supplied to the ship. Much more debatable was the risk advanced by the contractors of collision damage. There were many stoutly built junks off the coast and warning is given in the local sea pilot of serious damage being incurred by colliding with them. This warning must in part depend upon the speed of impact. The junks are described as having fore sails and are likely to be relatively slow. The "Zam" was a drifting target. In those circumstances it is difficult to imagine that the ship would suffer much damage from collision with a junk. More concerning, from a damage point of view, is being run-down by a passing ship. She was close to the route to and from the busy port of Shanghai and there is often fog. The casualty was exhibiting N.U.C. lights and was in contact by radio/VHF with those ashore and with other vessels. Although a collision clearly should not happen if a proper radar and visual lookout was being kept, there have occasionally been instances of any such collision are limited in two respects. The vessel is double-skinned and therefore if the hull was breached it would not necessarily breach a hold and damage cargo. However any extra flooding and therefore increase in draft, would make the subsequent salvage more complicated and probably include discharge. Secondly, if there was to be a collision it would almost certainly be due to be the negligence of the other ship and there
would therefore be an opportunity of obtaining financial redress. The risk therefore was of a very low order and the consequences likely to be limited.

15. These were well-performed services. Both Mr.D and Mr.Y have considerable experience in salvage and hold the Certificate of Senior Salvage Engineer and Senior Salvage Master, respectively. There was a prompt mobilisation of the salvage vessel and tugs and a sensible salvage plan. The services have been fully set out above and were helpfully itemised by Counsel for the Contractors. There was debate as to what weight, if any, should be given to those parts of the service which Counsel for the Respondents submitted were not beneficial. So long as it appeared reasonable in the interests of the salved property to take the action in the first place, the action should contribute to the award to the degree that it appeared necessary, though that degree cannot be on the same scale that it would have been had the action been beneficial. It must be recalled that in the first instance it was known that the casualty was laden, had struck the ground and that preparations were being made to abandon. When Mr. D boarded it was known that the flooding in No. 5 hold and the engine room had stabilised, but the full extent of the bottom damage and the likelihood of further flooding was unknown. Inspection at the LHS anchorage proved impossible. Main power had been lost and the master had left the boats swung out in case of need. Entry to port was obviously necessary and that required reducing the draft and obtaining the permission of the Port Authority. In those circumstances it was reasonable, with a view to advancing the services promptly, to call for and fit the caissons and to divert the "Dep" in order to bring the Barge "Zhong 1". The latter was towed into port as soon as it was confirmed that a suitable draft could be obtained without discharge. As to the caissons, although their presence proved unnecessary from a stability point of view, once rigged, the Port Authority insisted upon their retention until the vessel was at the terminal.
16. It was obviously reasonable to keep a close watch on the forecasts of the movements of the typhoons and as stated above there was a general concern on the evening of the 19th, that the immediate track forecast could mean danger for the casualty. I reject the suggestion that the threat was an invention of the Contractors in order to obtain permission to start pumping before the Harms party arrived. In the event the typhoons were not a danger to the casualty, though an increased sea and swell near the Man Liedao islands may have been connected. So far as the weather actually experience, the average wind/force in any watch never exceeded force 5 and was generally lighter. The salvage vessel and the ship's logbooks are the best evidence supported by the synoptic charts. Hand-written entries in weather areas support of coincide with the Contractors' statements, but though said to be from Shanghai, their origin was not fully explained. If the wind force was not a problem, the currents of 3 to 4 knots at the LHS anchorage was. It caused moorings to part and made diving impossible.

17. The services involved many vessels and personnel. There was a total vessel occupancy of 54 days. What was directly beneficial was the tow to a sheltered anchorage out of the traffic and where power could be provided for the reefer cargo and fresh water transferred. Pumps were landed and an experienced diver able to find and close the tunnel access in nil visibility and the dewatering of No. 5 hold and, when permission was given, the engine room. The total towage distance was 155 miles. The subsequent towages were carefully planned. The casualty, a dead ship, was kept under close control avoiding nets and fishing vessels. The contractors used their close relations with the Port Authority to obtain the necessary permissions. Passage through the Beicao channel needed particular care and timing, because of the limited bottom clearance, strong currents and the narrowness of the channel. Having obtained permission for the towages, the Contractors were left with the significant responsibility if things went wrong and the casualty caused and obstruction. Preparation was made to preserve the machinery with chemicals from their suppliers. The owners required the expertise of Harms and the
benefit of Correx, so the contractors were not required to take any actions to preserve machinery. This they could have done but with chemicals with a much more limited preservative quality applicable only to ferrous metals. The Contractors organised the discharge and when the owners declined to take delivery when in ballast undertook the tow to the floating dock.

18. The contractors are professional salvors operating on a large scale and with additional engineering back up. They maintain a 24-hour watch with salvage tugs on station. The availability of vessels and equipment is demonstrated by the quick response in this case. The Contractors operate a large fleet and staff with trained staff including naval architects, salvage technicians and divers. They maintain salvage stores and the salvage tugs carry salvage equipment. They have performed a number of services and are following a policy of expansion and investment. They very amply meet the criteria of Article 13 (h), (i) and (j) and are therefore deserving of encouragement.

19. The salved value of over USD 37 million is large. It was at risk of immobilisation with a very two-order risk of collision and a comparatively small part of the fund at risk of total loss. The services required a number of salvage skills, though it was not necessary to discharge or repair. I was reminded not to make an award out of keeping with what was done, but even that which was directly beneficial was considerable in craft and personnel employed and in the time occupied. The Contractors’ status deserves recognition. The Contractors operate 50% in Yuan is so small that it is fair to make no currency correction. In all the circumstance I consider that a fair award is USD 2,500,000.
CHAPTER IV

SPECIAL COMPENSATION

4.1. Background of Birth of Special Compensation

It became apparent that the 1910 Convention was not fully suited to developing conditions in the latter part of the 20th century. This deficiency was in part due to its dated form and language, but was mainly caused by changes in the shipping and salvage industries. There is no express provision in the 1910 Brussels Convention on Salvage regarding the right of a salvor to salvage remuneration or any other form of compensation whether by means of some form of enhancement in the award or otherwise, in the event of measures taken by him to prevent or minimise oil pollution damage or claims against the shipowner in respect thereof.

There has been a dramatic increase in the number of dangerous or possibly pollutant cargoes carried which, coupled with the increase in the size of vessels, has meant an increase in the risk of pollution. We can no doubt remember too well the media coverage of the Braer and the Exxon Valdez, and Amoco Cadiz incidents. The prevention of damage to the environment has become an issue high on the agenda of governments across the world. With salvors placed in the front line to help vessels in distress, the threat of pollution is obviously an issue which is of paramount importance to them. At the same time, the task of the potential salvor has increased enormously. Salvage operations are increasingly difficult and expensive to mount, not only because of the size
and sophistication of vessels in distress, but also because of the cost of building and operating the large salvage craft necessary to rescue them. (Gaskell, 1991)

In some cases, salvors have spent large sums of money in saving a ship only to have an “international leper” on their hands, which national authorities refuse to allow into port. The ship may even be destroyed under state intervention powers. The principle of “No Cure-No Pay” means that salvors don’t have an automatic right to a reward or the recovery of their expenses, since recovery was solely dependant upon the preservation of property. If the vessel was lost altogether there would not be remuneration at all.

In other cases, salvors were sued for damage to vessels or for causing pollution in trying to save them. Salvors have complained that they are not being rewarded enough for the salvage operations they do undertake. Although there are suggestions that the salvage industry has been “crying wolf,” the insolvency of some of the world’s leading salvage companies forced a realisation that there may no longer be an industry voluntarily supplying tugs on station at crucial ports or the world. Such a decline in salvage services was recognised as being in the interests of nobody, as the costs to national governments of maintaining such services themselves would be enormous.

Much of modern law is driven by notable, and sometimes sensational, events. Maritime law is no exception. Major casualties have led to changes in international maritime law and practice. The 1967 Torrey Canyon disaster spawned the Intervention Convention of 1969, the Civil Liability Convention of 1969, and the Fund Convention of 1971. The Exxon Valdez incident in 1989 led to the US Oil Pollution Act, 1990 and a radical change in tanker design. Salvage is no exception to this trend, where much of the new law is due to the Amoco Cadiz in 1978. In the wake of this mammoth disaster, public interest was reawakened. (Bishop, 1996)
The casualty involved a 233,600 DWT Liberian tanker which spilled its entire cargo of 223,000 tons of Arabian crude oil when it grounded off the island of Ushant. As action for damages was brought by the French Government in the United States, but it was not until early in the 1990’s that the seventh US circuit Court of Appeals in Chicago ruled that AMOCO should pay US$204,000,000 in compensation. AMOCO decided not to appeal, thus ending over ten years of litigation.

The official enquiry and report published by the Liberian Bureau of Maritime Affairs concluded that, had salvage assistance been rendered at an earlier stage, before the tanker had run aground, the disaster may have been avoided. The cause for the delay in salvage assistance was the master and the salvage company’s inability to reach a satisfactory salvage agreement.

It was recognised that to prevent damage to the environment, steps would have to be taken to encourage salvage companies to render assistance with the minimum of delay. A salvor’s reluctance to enter into a salvage contract in which his remuneration is dependant upon the value of property he salves, when there is unlikely to be any great salved value and substantial out of pocket expenses incurred had to be overcome somehow.

Small changes to the law were attempted internationally in order to improve the salvors’ position. However, the first major step was achieved not by any convention, but by the amendments in 1980 to the LOF. The LOF 1980 introduced a number of novel features of benefit to the salvor, which included an enhanced award, a safety net, and new obligations on the salvee concerning cooperation, redelivery and security.

The “safety net” entitled the salvor to a contribution to this expenses if (i) he/his servants/agents were not negligent, (ii) the property being salved was a tanker loaded
with oil and (iii) the services were unsuccessful. If the salvor had successfully protected the environment than they were eligible for a 15 % uplift on their expenses.

LOF 1980 was a clear example of how LOF has often moved ahead of the existing law. The “safety net” did not at that time have the force of law in the international community. As a result, there was fierce international pressure and lobbying during the early 1980’s from the maritime industry, environmentalists and the International Maritime Organisation (IMO) for protection of this nature to be provided on an international basis. The CMI, which participated in the work of the Legal Committee of the IMO, began looking into the matter in 1979 and a final draft convention was agreed at an IMO Conference in April 1989. Sixty-eight of the 131 member States were represented, as were two inter-governmental and 19 additional international organisations.

The main thrust of the Salvage Convention was undoubtedly to encourage salvors to proceed to the assistance of vessels which threatened damage to the environment, and to protect the environment itself. This was apparent, not only from the deliberations before the CMI and the Legal Committee of IMO, the *travaux preparatoires*, but also from the opening paragraph of the Convention itself which reads:

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THE STATE PARTIES TO THE PRESENT CONVENTION,
RECOGNIZING the desirability of determining by agreement uniform international rules regarding salvage operations,
NOTING that substantial developments, in particular the increased concern for the protection of the environment, have demonstrated the need to review the international rules presently contained in the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910,
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CONSCIOUS of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment,
CONVINCED of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger,
HAVE AGREED [etc],

By way of introduction of the 1989 Convention, a major change in the law is the creation of the exception to the principle of “No Cure-No Pay” when the salvor performs services that do not succeed in saving ship or cargo, but do save the environment. Lloyd’s market regarded the new provisions as being so important and necessary that a new version of LOF, *i.e.*, LOF 1990 was quickly produced. This gave effect to many of the new provisions in the Convention and was particularly unusual in that by actually incorporating four very important articles of it into its text, it gave the substance of the Convention immediate contractual effect in countries whose nationals used the LOF form. Fortunately, this meant that the major provisions of the Convention could be invoked through LOF before the 1989 Salvage Convention entered into force. The Convention was brought into force in July 1996.

Turning to the provisions of the Conventions, it encourages salvors to act promptly by providing that any salvor rendering assistance to a ship which poses a threat to the environment will, as a matter of law, be entitled to a minimum remuneration based upon the expense of his salvage operation, an exception to the “No Cure-No Pay” rule. There is no risk of the salvor making a loss.

The main difference between LOF 1980 and the Salvage Convention is that LOF 1980 provided a safety net limited only to oil pollution and tankers. However the 1989
Convention applies to any ship which carries a substance which may constitute a danger to the environment. The difference is very important because in recent years there have been a number of casualties which could have caused extreme damage to the environment, but the cargoes would not have been covered by the LOF 1980. A good example of this is the *Karcase* which sank in a river off Borneo loaded with a cargo of sodium cyanide, capable of poisoning much of the marine life for many miles around.

Undoubtedly Article 14 is the most important change to existing salvage law brought about by the Convention. It is a major breakthrough going beyond the provisions of LOF 1980, to amend the fundamental concept of “No Cure-No Pay”, which has prevailed in salvage law for several centuries. This clause was incorporated into LOF 1990.

This Article provides as follows:

Special compensation

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special
compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1 (h), (i) and (j).

4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.

5. If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

The Article was intended to be the main encouragement to salvors to deal with incidents where, for example, vessels and cargoes posed a serious threat to the environment but were badly damaged, requiring expensive and time consuming salvage efforts but when being so badly damaged the salved values, representing the limit of any salvage award under Article 13, looked to be very small and insufficient to justify any effort and expenditure by the salvor. In such cases there is very little or no incentive for a salvor to render assistance, other than by special contract, which takes time to negotiate. These were the very casualties to which, in the general interest of the public, salvors should be actively encouraged to assist.

Article 14 endeavors to give that encouragement by providing specifically that if the vessel or cargo threatens damage to the environment and the salvor fails to earn an
award, under provisions of Article 13, which is at least equivalent to the compensation assessed under Article 14, he shall be entitled from the owners of the vessel only to compensation for the difference. (The compensation paid under Article 13 is paid by all property interests.)

Compensation is assessed in two steps under Article 14. Firstly, under Article 14 (1), if the salvor has carried out a salvage operation which is either an operational or financial failure, he will be entitled to compensation at least equivalent to his expenses. These include a “fair rate” for equipment and personnel actually and reasonably used. Secondly, under Article 14 (2), if he carries out a salvage operation and prevents or minimises damage to the environment, he will be entitled to compensation from the owner made up of his expenses, plus a percentage of those expenses, up to an additional 30% of the expenses or up to 100% at the arbitrator’s discretion.

4.2. Problems arose under the Provisions of Article 14 of the 1989 Salvage Convention

4.2.1 Coastal Water or Inland Water

One of the conditions for special compensation is that the vessel or its cargo should have “threatened damage to the environment”. Damage to the environment is defined under Article 1 (d) as meaning: “Substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.”

No sooner had LOF 90 come into force, then a problem arose under this definition in June 1991. The Abt Summer, a tanker laden with some 250,000 tons of crude oil, suffered an explosion in the mid-South Atlantic some 900 miles off Angola. The crew
abandoned the ship and were picked up by a passing vessel, leaving the Abt Summer drifting and ablaze. Tugs engaged under LOF 1990 put out from West Africa and steamed for some five days to the casualty, only to find a pool of oil. After surveying the area, they concluded that the vessel had sunk and returned to base. The salvors incurred substantial expense in this abortive operation and made a claim under Article 14.

Immediately, attention was brought to the above definition, and the claim was rejected on the ground that there was no damage “in coastal or inland waters or areas adjacent thereto”. Plainly the claim was correctly rejected, but it is interesting to note that under LOF 1980 (the predecessor to LOF 1990) such a claim would have succeeded because the safety net under the contract had no geographical restriction.

The salvage industry has been most concerned to learn that a Convention, which is designed to encourage them, has given rise to the development of this lacuna. They point out that the environment does not cease to exist once you pass out of coastal waters, and that such an artificial barrier is ill-defined, with the result that salvors never quite know what their rights are. If a casualty occurs outside coastal waters, their right to special compensation, (a safety net designed to encourage them to proceed to the assistance of a casualty), is entirely dependent on wind and tide. If wind and tide take the pollutant into coastal waters, a salvor will have a valid claim, but if they take it away, he will not. This is unsatisfactory.

Salvors have sought, so far without success, an amendment of the world’s best known salvage contract, Lloyd’s Open Form (LOF 1990), so that they could at least enjoy the same protection they had under its predecessor, LOF 1980, which assured them their expenses in such a situation. They have also made representations to IMO seeking an amendment to the Convention by an appropriate Protocol. IMO, while indicating some sympathy with salvors’ position, have taken the view hat it is too early to make any
amendments to a Convention which is only just coming into force. The salvage industry through its trade body, the International Salvage Union (ISU), has pledged to pursue reform of this provision.

4.2.2 Threat

As will be seen for Article 14 (i) a claim for special compensation is dependent upon their being a “threat” of damage to the environment and, under the definition of damage to the environment, the threat has to be substantial. What is a “threat”, and when is it “substantial” is a crucial question.

Both issues were tackled by the arbitrator in the *Yinka Folawiyo*, a vessel of some 10,000 tons gross laden with 3,000 tons of steel pipes, which had grounded on a beach near Santander Harbor, in October 1991. The salvage services took some 45 days (including 25 days watchkeeping). The arbitrator found that the vessel was indefinitely immobilised until professionally assisted with a very low order risk of total loss or threat to the environment form the escape of bunkers. Fuel oils consisted of 144 tons of heavy fuel oil and 89 tons of diesel oil.

The first matter debated was what constituted a “threat” of damage to the environment. The shipowners argued it should be an actual threat of a grave and imminent danger of damage. The salvors argued it was sufficient to show a reasonably perceived threat of damage to the environment other than one which was so minor or trivial as not be a matter of concern or newsworthy. The arbitrator, noting that the preamble to the Convention explained “the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger” concluded:
… this purpose would not be achieved if the Contractor assumes the risk of reserving no compensation when, after a reasonable inspection, that which appeared to be a threat of damage turned out, in fact, not to materialise. Further, the intention of protecting the environment would not be served if the threat is confined to a grave imminent danger, in order to take the intention seriously, a low order chance of substantial damage should be sufficient to constitute a threat.

On the facts, he found that “the sequence of events necessary for the oil to escape makes the chance of such an escape a very low order risk, but remains within the realms of realistic possibility and, therefore, sufficient to constitute a threat”.

4.2.3 Substantial Physical Damage

The next matter considered in that case was whether there was a threat of substantial physical damage. There was no guidance to be found in the Convention itself, so the arbitrator had to resort to his own interpretation.

He found that substantial and major are both comparative terms. The adjective “major” stands in contrast to “minor”. Internationally renowned spills like the *Torrey Cannon*, *Amoco Cadiz* and *Exxon Valdez* are obviously major incidents. To restrict compensation to these events would hardly give adequate incentive to salvors to protect the environment as intended by the preamble to the Convention.

In the end, the arbitrator considered that the potential damage to the harbour (Santander) and other facilities in the West Bank, to the resource of fishing within the Estuary and to the marine life of the Mud Flats to be “substantial physical damage” from what might have been a “major” pollution incident in the Santander area. Therefore, the arbitrator
held that there was a threat of substantial physical damage to the environment and that the Contractors succeed in their claim for Article 14 special compensation.

4.2.4 Time of Threat

A further point arises under Article 14.1. Does there have to be a threat of damage to the environment at the commencement of the salvage operation, or is it sufficient if it arises during the course of the operation? Further, if it arises during the operation, does Article 14.1 apply to the services rendered before the threat arose? This question was considered by both the High Court and the Court of Appeal in the case of *the Nagasaki Spirit*. *(supra)* This is a very important case for the salvage industry. It will also be mentioned in the following paragraphs. Therefore, it is necessary to describe this case in detail here.

The m.t. *Nagasaki Spirit* collided with the container ship *Ocean Blessing*. This collision occurred at about 2320 hours on 19th September, 1992, in the Northern part of the Malacca Strait on the Indonesian side in a position 04°33’N., 98°43’E., about 380 nautical miles from Singapore. The *Nagasaki Spirit* was part laden with 40,154 tonnes of Khafji blended crude oil, which contained a percentage of naphtha and fuel oil. The cargo was loaded in Nos.2, 4 and 6 centre tanks and Nos.1 and 5 wing tanks and the slop tanks. As a result of the collision the port side shell plating of the *Nagasaki Spirit* was breached in way of No.4 port tank. The tank’s inboard bulkhead was demolished above the fourth longitudinal and No.6 centre tank was penetrated. The forward side shell plating and forward bulkhead of No.5 port tank were also crushed. In consequence, approximately 12,000 tonnes of oil were rapidly released into the sea and caught fire. Both ships were engulfed in a blazing fire. Two members of the crew of the *Nagasaki Spirit* were the only survivors from either ship. By the time the Contractors’ salvage tug *Salveritas* arrived on the scene at about 1000 hours on the 21st September, the main
deck was fire damaged and sagging to a maximum of about 4 feet in way of the hole and most of the centre-line main deck cargo and inert gas piping had collapsed and fractured.

The Contractors, Semco Salvage & Marine Pte. Limited, are well-known professional salvors based in Singapore. At the material time there were no alternative salvors with the resources immediately available to provide the size and type of tugs and scale of assistance required. The Contractors were engaged to assist both vessels. Their own resources were stretched and Smit Tak were engaged as sub-contractors on ISU terms to assist with the services to the Nagasaki Spirit. Those services were rendered on the terms of LOF 1990.

The salved values are set out below.

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Ship salved</td>
<td>USD 6,695,070</td>
</tr>
<tr>
<td>Cargo</td>
<td>USD 2,557,676</td>
</tr>
<tr>
<td>Bunkers</td>
<td>USD 193,442</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>USD 9,466,188</strong></td>
</tr>
</tbody>
</table>

Both courts, in upholding the finding of the Lloyd’s Form appeal arbitrator on this issue, found that the special compensation provisions did not begin to apply until a threat of damage to the environment had arisen. Thus, if a salvage service begins in the mid-Atlantic (well away from coastal waters) and ends in a port of refuge, the special compensation provisions do not begin to bite until the ship is towed to a position where there is a threat of damage to “coastal waters or waters adjacent thereto”.

The next question to be considered is whether the special compensation provisions continue to apply until the end of the salvage service, notwithstanding that the threat of damage to the environment may have been overcome at an earlier stage. This issue was particularly relevant in the case of the Nagasaki Spirit, during the 84 days salvage
services, the threat of damage to the environment ceased on day 63. All the tribunals which considered this problem—the arbitrator, the appeal arbitrator, the High Court and the Court of Appeal found that once a threat of damage to the environment had arisen, and the special compensation provisions had begun to bite, they would continue to be applicable until the end of the salvage service, notwithstanding that in the interim the threat of damage to the environment may have been overcome.

4.2.5 Uplift

Article 14.2 provides: “If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to maximum of 30 per cent of the expenses incurred by the salvor”. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in Article 13, paragraph 1, may be increased to no more than 100 per cent of the expenses incurred by the salvor.

The distorted wording of this Article was the result of a disagreement between the various delegations at the Salvage Convention, and was a compromise provision. While it will be seen that the expenses can be doubled, there is clearly a natural break of 30 per cent, and it would take an exceptional case to merit an award above that level. There have now been many cases of special compensation decided by the Lloyd’s Form arbitrators. The vast majority fall below 30 per cent, but there have been exceptional cases where it is much higher— in particular the Nagasaki Spirit, where it was assessed at 65 per cent, and the Ocean Blessing, where it was assessed at 45 per cent.

Clearly the degree of uplift will vary according to the circumstances of a case. If, for instance, there was a highly meritorious service which saved immense damage to the
environment, but only took one day, there would be very little scope for the arbitrator to make an encouraging increment, for it would be limited to doubling one day’s expense. In such a case, an increment of 100 per cent might well be given. If, however, you had exactly the same case which took, say, 100 days, the effect of enhancement by way of increment would be much greater and it would probably be unfair to award anything like 100 per cent.

In *the Nagasaki Spirit*, it was found that a tanker which had spilled some 14,000 tons of oil and had 26,466 tons remaining on board, was in danger of drifting with wind and tide towards a highly sensitive holiday area which she might reach, possibly by grounding, within the space of 13 days. The arbitrator found that there was a real possibility of a substantial spill affecting an environmentally-sensitive area and, as a consequence, awarded an increment of 65 per cent. This uplift was not challenged in the subsequent tribunals.

As we saw earlier, under Article 14.1 it is sufficient if there is a threat of damage to the environment for it to be simply a “perceived threat” rather than an “actual threat”. However, it is important to note that under Article 14.2 it will not be sufficient simply to show that there was a reasonably perceived threat. Instead, there has to be actual success in preventing or minimising damage to the environment.

This issue came up for consideration in the case of *the Bettina Danica*. The vessel ran aground off the Orkneys in February 1993 and, in so doing, spilled some 30 tons of gas oil, leaving 20 tons on board. The Lloyd’s Appeal Arbitrator found that there had been a reasonably perceived threat and that the remaining 20 tons would cause damage to the environment but that, as events later proved, there had not been an actual risk of damage to the environment. Accordingly, while he allowed a claim under Article 14.1, he did not give an uplift under Article 14.2.
4.2.6 Period During Which Salvor is entitled to Special Compensation

With regard to the period during which the salvage operation Article 14 is applicable, in the Nagasaki Spirit case, the Court concluded that Article 14 can be claimed for the entire salvage operation, at least insofar as the threat to the environment occurs at the start of the operation. The Court made some comments on what the position would be where the threat occurs, say, half way through the service. Although the Court did not make a final ruling on this, it gave a clear indication that in these circumstances it would not expect the period before the threat to the environment arose to be included in the claim for Article 14, only the period afterwards. This will be further defined once more cases come up on this point.

4.2.7. The Most Contentious Issue - what is the meaning of “fair rate”

Article 14.3 provides:

Salvors’ expenses for the purposes of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in Article 13, paragraphs 1(h), (i) and (j).

The question as to what was a “fair rate” for equipment and personnel gave rise to substantial debate and judicial opinion in the case of the Nagasaki Spirit. The dispute, in a nutshell, was whether the “fair rate” should represent the expense to the salvor of providing the equipment and personnel in question (i.e., without an element of profit) or whether there should be a fair rate of remuneration for that service (i.e., a rate which included profit).
The original arbitrator found that as the purpose of the Salvage Convention was to provide an adequate incentive to the salvor, a fair rate must be encouraging, which required a rate which, in essence, included an element of profit. Further, bearing in mind the specific reference to the criteria set out in Article 13, paragraphs 1(h), (i) and (j), account should be taken, in the case of a professional salvor, of his overall investment in salvage equipment, the expense of his office operation and personnel, depreciation and idle time. The arbitrator awarded special compensation under Article 14.1 of sums of up to $25,000 a day for the tugs involved for the whole period of the service in which they were engaged plus the uplift given under Article 14.2 which, as mentioned earlier, amounted to 65 per cent.

The Lloyd’s Appeal Arbitrator, while agreeing that full account should be taken not only of the cost of operating the tugs and equipment involved, but also – in order to take into account Article 13.1, (h), (i) and (j) – the idle time of the tugs during the course of the year, nevertheless disagreed that the assessment under Article 14.1 should include an element of profit. In so doing, he noted that the uplift available under Article 14.2 – which would be applicable in the event of the salvors preventing damage to the environment – would in effect give rise to a profit element.

The findings of the Lloyd’s Appeal Arbitrator on this aspect were upheld by both the High Court and the Court of Appeal. In the words of Staughton, L.J.:

…a fair rate means a rate of expense, which is to be comprehensive of indirect or overhead expenses and take into account the additional cost of having the sources instantly available. Remuneration, or uplift, or profit, is to be provided, if at all, under Article 14.2. Beyond that, what is a fair rate is a matter of judgement for the tribunals of fact. It is not necessarily the result of any exact mathematical calculations.
Arbitrators must make the best they can of that. ([1997] 1 Lloyds Rep. 323 (H.L.))

Consequently, from the *Nagasaki Spirit* case, we know that “fair rate” is a rate of expense (including both direct and indirect expenses as defined in Article 14.3) and not a “fair rate” of remuneration. Therefore, the rate does not include a profit element. The Court considered that this interpretation struck a reasonable balance between the interests of the various parties and their insurers. On the Court’s interpretation, if the efforts of the salvor to prevent or minimise damage to the environment are successful, the salvors will obtain a larger traditional salvage award against ship and cargo than they would have done before Article 14 was incorporated into LOF 1990 because of the express provision in Article 13 of the 1989 Convention that benefit to the environment should be taken into account in assessing the salvage reward. There is no reason why such an award would not be substantially larger if the benefit to the environment was great. The enhanced award would be met by the Hull and Cargo Underwriters.

However, the real incentive to the salvors is that they will be paid their expenses on a broad and generous basis in cases where there was a threat of damage to the environment, even in circumstances where the salvage services not being successful, the reward is minimal because of the low salved fund. Expenses are to be calculated in such a way as to take into account indirect expenses. Expenses so calculated are special compensation and the salvor is eligible for an uplift if the services rendered actually prevented or minimised damage to the environment. Special compensation will be paid by the P&I Clubs and will only be payable where it exceeds the amount of the salvage award.

This begs the question of what are the direct and indirect expenses that can be taken into account. Article 14.3 defines expenses as “out of pocket expensed, reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel
actually and reasonably used in the salvage operation, taking into consideration the criteria set out in Article 13, paragraph 1(h), (i) and (j)”. Article 13(1) (h), (i) and (j) state as follows:

(h) the promptness of the services rendered;
(i) the availability and use of vessels or other equipment intended for salvage operations;
(j) the state of readiness and efficiency of the salvor’s equipment and the value thereof.

The Court has given a clear indication on how such expenses are to be approached. The out of pocket expenses claimable are no different from those claimable in the traditional law of salvage and will not be different for the purposes of an Article 13 salvage claim to an Article 14 claim. The Court accepted that the reference in Article 14.3 back to the criteria in Article 13.1(h), (i) and (j) was a blunt instrument used to make it clear that expenses were not to be viewed narrowly so that professional salvors who are likely to have a high level of indirect costs are protected. Quantification of indirect expenses is a job for the accountants and may vary in each different case. In general, the salvors should take into account their overheads including insurance, depreciation and maintenance costs for both their tug fleets and for their fixed assets such as offices, warehouses and workshops in arriving at a “fair rate”. Utilisation or down time should also be taken into account.

4.3. Deficiencies and Difficulties in Assessment of Special Compensation

The assessment of special compensation under the existing regime has proved to be time consuming, cumbersome, uncertain and expensive to operate. This is not in the general
commercial interest of any party to a salvage contract. The problems may be briefly summarised as follows (Bishop, 1999b):

(a) There has often been difficulty in obtaining security for claims for special compensation and in many cases salvors are still not being paid sums which have been awarded to them by arbitrators after lengthy and contentious arbitrations.

(b) Under Article 14 a salver is entitled to special compensation (if it exceeds the Article 13 award) whenever there is a threat of substantial physical damage to human health or marine life or resources, in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or other similar major incident. The trigger point "threat of damage to the environment" is not always easy to ascertain. There continue to be arguments as to what is sufficient to constitute "a threat". What is the meaning of "substantial physical damage" to the environment? What are "coastal waters or areas adjacent thereto"? Despite many arbitrations involving the interpretation of these words they still give difficulty on the particular facts of many cases. The resultant arguments are time consuming, expensive and leave all sides uncertain until the problems are finally resolved - sometimes years later.

(c) Aside from the problem of deciding whether special compensation is relevant, there have been considerable difficulties in assessing the amount of special compensation. In the Nagasaki Spirit case, the House of Lords defined "fair rate" for tugs and equipment but, notwithstanding this, there are still major problems in applying the principles it laid down. Unless the parties to an arbitration take a pragmatic and common sense approach (and fortunately many do) one is locked in to a close examination of a salvage company’s entire accounts, which often involves an investigation by accountants followed by a lengthy arbitration.
(d) The assessment of the uplift under Article 12.4 necessitates an assessment of the environmental damage which would have occurred had the salvage of the vessel been unsuccessful which invariably involves the appointment of a number of experts, naval architects, oceanographers and environmental experts with the attendant cost.

(e) From an insurer's point of view there is a lack of clear definition as to when the risk moves from the hull underwriters to the Clubs and lack of supervision and involvement by the Clubs when they are at risk.

4.4. Case Study

For the purpose of better understanding, it is necessary to describe a case, the salvage award of which is arbitrated under the Article 14 of 1989 Salvage Convention. The details of the case described below were obtained by the author from a prominent firm of London solicitors practising Admiralty law. For obvious reasons of business confidentiality, the name of the salved ship, the salvor, and the names of the ports, yards and so on have been altered. The quoted paragraphs appearing below have been taken from the written Arbitration Award.

**Name of ship**
Motor ship “Lucky”

**Date and place of salvage**
11th to 26th January 1993. Western approaches to the X anchorage
Description and size of the ship salved
Motor bulk carrier “Lucky”, built in 1970, registered in Piraeus, of 16,187 tons gross, 27,782 dwt., 180.3x22.9x14.41 metres having 6 holds and 6 hatches with MacGregor type covers, engine room and accommodation aft and fitted with engines of 11,2000 BHP

Nature and the amount of salved cargo, if any
About 25,000 tonnes of South African low sulphur heating coal

Value of the salved property including cargo and freight
Ship and bunkers USD 340,000
Cargo USD 574,133
Total USD 914,133

Particulars of the salving vessels, appliances used and their approximate value
Motor salvage tug “Glad” built in 1980 of 1,598 tons gross, 69x14.22 metres and fitted with engines of 11,280 BHP. Four hired port tugs.

Nature of the casualty and of the services rendered
Spontaneous combustion of fires in cargo. Proceeding about 30 miles and escorting equivalent distance to anchorage. Cooling with monitors and hoses. Subcontracted expert fire fighters. Removal of 346 tonnes of bunkers and 15 tonnes of diesel oil to tug. Calculations as to longitudinal strength by naval Architect. Further flooding of holds with water and inserting other holds with foam. Leasing with authorities and obtaining permission to enter port. Pumping so far as possible from flooded holds. Patching and sealing. Discharging about 7,500 tonnes and extinguishing fires as found.
Brief description of the danger and risks from which the property was saved
Not applicable. The bunkers of the “Lucky” caused a threat of damage to the environment.

Time occupied in the services
About 16 days

Approximate amount of salvage expenses incurred by the salvors
USD 353,626 out-of-pocket expenses

The arbitrator found and adjudged that the Contractors were entitled to Special Compensation and awarded and adjudged:

… that the Respondents do pay to the said Contractors by way of Special Compensation the sum of USD 674,884 together with interest at the rate of 16.25% per annum from the 26th January 1993 to the date of publication of this my award together with such interest as may fall due in accordance with Clause 10c (ii) of the said Agreement at the rate of 7% per annum and…the respondents do pay to the Contractors clause 5 expenses in the sum of BGP 1,450.00 together with interest at the rate of 16.25 % per annum from the 26th January 1993 to the date of publication of this award together with such interest as may fall due in accordance with Clause 10c (ii) of the said Agreement at the rate of 7% per annum and…all costs be borne and paid as directed in the Schedule of Cost hereto.
CHAPTER V
SPECIAL COMPENSATION P&I CLAUSE (SCOPIC)

5.1. Background of SCOPIC

Article 13 of the 1989 Salvage Convention enabled a salvor to recover a salvage reward in accordance with the 10 criteria. Article 14, as an exception to the "No Cure-No Pay" principle, enabled the salvor in cases where there was a threat of damage to the environment to recover his expenses under Article 14(3). However, as mentioned in the previous chapter, there have been a number of problems about the wording of Article 14, some of which have concerned shipowners and the P&I Clubs; others have concerned salvors.

Due to the provisions of the Article 14 themselves, it is easy to understand that the P&I Clubs worried that the salvors would extend the work as long as possible as the Article 14 does not give a salvor an incentive to swiftly complete an operation. Meanwhile, there is no pressure for the property underwriters to make an early and clear decision as to whether the ship will be accepted as a constructive total loss, and it is difficult for the P&I Clubs or the shipowner to control this situation. From the salvors perspective, Article 14 has at least two kinds of restriction, one of which is that it only applies if there is a threat to the environment, which has to be proved; the other one is that it is not relevant outside coastal or inland waters or areas adjacent thereto. Following the decision of the House of Lords in the Nagasaki Spirit, which meant that all that the
salvor recovered was his expenses unless he could recover an increment on those expenses under Art. 14(2), the salvors are also concerned that the fair rate for equipment and personnel should not include any element of profit. All these issues have lead to a lack of clarity and uncertainty and make the arbitrations involving Article 14 long and expensive, the costs of which are generally borne by the shipowners and their P&I Clubs.

For the reasons already given, it was in the interest of salvors, shipowners, other property owners, property insurers and liability insurers, particularly P&I Clubs, namely all sides of the shipping industry, to get together with a view to resolving the problems being encountered and to devise a system whereby a salvor had an incentive to proceed to a casualty (whether or not there was a threat of damage to the environment) and be sure to recover remuneration for so doing. Such remuneration was to be assessed on a sensible commercial basis and not be simply a reimbursement of expenditure.

Therefore, a meeting was arranged between representatives of the International Salvage Union and the International P&I Club Group. After the initial meeting, representatives from the property underwriters took part in the negotiations. Their work was conducted with a view to agreeing on a simplified framework for special compensation. As a result, the SCOPIC clause was developed, which came into operation on 1 August 1999.

5.2 Introduction of SCOPIC Provisions

SCOPIC stands for "special compensation protection and indemnity clause". It has been designed for use in casualties involving members of the International Salvage Union and ships entered with a member of the International Group of P&I Clubs and takes the form of an optional addendum that can be used in conjunction with LOF.
SCIPIC is not a short document. The clause itself has 15 sub-clauses, which are:

- General clause
- Involving the SCOPIC Clause
- Security for SCOPIC Remuneration
- Withdrawal,
- Tariff Rates
- Article 13 Award
- Discount,
- Payment of SCOPIC Remuneration
- Termination,
- Duties of Contractor
- Shipowner's Casualty Representative ("SCR")
- Special Representatives
- Pollution Prevention
- General Average
- Dispute

There are also three Appendices following the sub-clauses. Appendix A is list of rates for personnel, tugs and other craft, portable salvage equipment. Appendix B is about the Shipowner's Casualty Representative. Appendix C is about the Special Representatives. In addition to these there are two Codes of Practice: one is Code of Practice between the International Group of P & I Clubs and the Property Underwriters, the other is Code of Practice between ISU and the International Group Clubs.

It is important to bear in mind that the "special compensation" referred to in SCOPIC has nothing to do with special compensation under Article 14 of the 1989 Salvage
Convention. It has nothing to do with any threat of damage to the environment but is in essence a form of guaranteed remuneration payable by a shipowner i.e., his P&I Club, to the salvor. SCOPIC does not do away with the principle of special compensation, but merely replaces its method of assessment. Special compensation (SCOPIC remuneration) will continue to be paid only to the extent that its assessment exceeds any Article 13 award.

P&I Clubs are normally not parties to a salvage contract and, therefore, cannot be bound by a new clause to an LOF contract. However, the Code of Practice will apply whenever a ship entered with a member of the International P&I Club Group is salved by a member of the ISU.

SCOPIC is a long and relatively complicated document with several pages. It seems not so appropriate to quote the clause in full in this study. However some basic description and introduction in plain words of each sub-clause will be given hereunder.

The first sub-clause is “General Clause”. It provides that SCOPIC is a supplementary to LOF and it incorporates the definitions in LOF; if there is any conflict, LOF prevails; SCOPIC, once invoked, takes the place of Article 14; for the purposes of liens and time limits the service is treated as salvage.

Clause 2 is “Invoking the SCOPIC Clause”. It provides that the SCOPIC can be invoked at any time during the service by a contractor by written notice regardless of threat to environment. The decision to invoke the clause is entirely that of the salvor. No threat of damage to the environment is necessary. This is a major improvement in the current system and does away with all arguments on this point. However, the assessment of SCOPIC remuneration will only commence at the time the salvor invokes the clause but not from the commencement of the services. Under Article 14 no decision has to be
made and the salvor can claim special compensation within two years. Under SCOPIC he will need to make a conscious decision during the course of the services. It is easy to understand that the earlier SCOPIC is invoked, the more expenses will come to be reimbursed.

Clause 3 is “Security for SCOPIC Remuneration”. It provides that as soon as SCOPIC is invoked owners of the vessel have to provide USD 3 million security by Bank Guarantee or Club letter within 2 working days. The security of USD 3 million must be deposited regardless of the total amount of SCOPIC remuneration that may be payable. The security may be adjusted up or down by agreement at the termination of the services and if there is no agreement, it will be decided by arbitration.

Clause 4 is “Withdrawal”. It provides if there is no security the salvor has the option to revert to "pure" LOF with Article 14.

The Clubs have agreed, in the Code of Conduct, to provide security in the form of an agreed set of words (ISU 5) on behalf of an entered member, unless there is a defence to any claim he may have. If this guarantee is not provided, the contractor, at his option, can withdraw his notice invoking the SCOPIC provisions and revert to the LOF as if it had not incorporated SCOPIC. This is also a major improvement from a salvor’s point of view. He will either have a guarantee whilst the service is current or if it is not provided, he knows where he stands.

Clause 5 is “Tariff Rates”. It provides that SCOPIC remuneration is assessed according the tariff rates listed in Appendix A; regarding the third party costs. For an ISU member, it is calculated at the tariff rates in Appendix A regardless of the actual cost. For a non-ISU member, if the hire rate is greater than tariff, it will be calculated on actual cost
subject to agreement of the SCR that it was reasonable to hire the equipment at the particular cost. The basic bonus is 25% on all costs.

The tariff rates agreed are intended to be profitable rates, though this will vary according to the area in the world in which the craft are operating. Some areas have higher overheads than others. But it was not felt possible to deal with each individual area under SCOPIC. In the interests of simplicity, a very broad brush was used to achieve generally acceptable rates applicable worldwide which do rough justice. They will be reviewed every year. (Bishop, 1999b)

This system is an improvement on assessing a “fair rate”. It should be possible, by using the tariff, to make a calculation at the end of each day of operation and gauge the amount of SCOPIC remuneration that has accrued.

If the salvor hires in equipment in excess of the tariff rate, it can be allowed as out of pocket expenses if the SCR thinks it was a reasonable one in the particular circumstances of the case. But the bonus which accrues to that part which is in excess of the tariff rate is restricted to 10%. “This protects the salvor in those cases when he is held to ransom by the owner of an essential piece of equipment.” (Bishop, 1999b)

Clause 6 is “Article 13 Award”. Clause 7 is “Discount”. They provide that the Article 13 award is still assessed and it is payable by all interests in the usual way. SCOPIC remuneration is only payable by vessel owners in excess of the total Article 13 award. SCOPIC has no effect on an Article 13 award. In the event of the salvors invoking SCOPIC and the Article 13 award exceeding the assessment of SCOPIC remuneration, the Article 13 award will be discounted by 25% of the difference between the Article 13 award and the SCOPIC assessment, calculating SCOPIC from day 1.
This provision has been designed to encourage the salvor not to invoke SCOPIC provisions in every case. If not, there would be a natural tendency for salvors to invoke the SCOPIC remuneration provision in every case which would entirely remove the “No Cure-No Pay” element. “This is the price the salvor must pay for the benefits of the other provisions under SCOPIC.” (Bishop, 1999b) The discount is for the benefit of the property underwriters. “They have no losses under the SCOPIC Clause. This is a positive gain and perhaps is some compensation for any increased liability they may have under Article 13(i)(G) (‘skill and effort of the salvor in avoiding or minimising damage to the environment’)” (Bishop, 1999b)

Clause 8 is “Payment of SCOPIC Remuneration”. It provides that if there is no Article 13 award, SCOPIC remuneration should be paid within 1 month of a presented claim with interest at U.S. prime rate plus 1%. If Article 13 award +SCOPIC remuneration - pay 75% of excess of SCOPIC over Article 13 assessed + due interest from date of completion the payment is as above. Indemnity should be given by Contractor to vessel owners for over-payment.

Clause 9 is “Termination”. It provides that the salvor may terminate by notice to owners with a copy to the SCR, if total cost, before bonus, of services to date and to finish the job will exceed the total of the value of property capable of being salved and all SCOPIC remuneration as well. The owners may terminate their liability to pay SCOPIC remuneration at any time but the salvor get 5 days' notice; in the event of termination by owners. SCOPIC remuneration will be assessed under tariff for all work done to date and demobilisation time will be included. Termination is only allowed provided Government, local or port authority or other "officially recognised body having jurisdiction" does not restrain demobilisation.
In short, once SCOPIC has been invoked, the whole LOF contract can be terminated:

(1) by the contractor, if the overall cost to him less any SCOPIC remuneration is greater than the value of the property salved, and

(2) by the owner, after giving five days' notice to the contractor.

These additional rights to terminate the whole contract are important. From the contractor's point of view, he will be able to do so as soon as it is clear that it is not in his financial interest to continue. Obviously, this Clause is to protect the contractor from being locked into a loss-making contract after the SCOPIC Clause has been invoked. As far as the owner is concerned, he will have the power to withdraw (once SCOPIC has been invoked) at any time after giving five days' notice. It should not be of major concern to salvors as it will only apply when SCOPIC has been invoked, which is only likely to be when it is questionable whether salvage - in its traditional form - is no longer a reasonable commercial venture. Furthermore, if there is a threat of damage to the environment it is unlikely that the local authorities will permit the salvage contract to be terminated. However, if the Clause is operated, the contractor is guaranteed five days of SCOPIC remuneration

This clause is another countercheck (one is Clause 7), which will help to persuade the contractor not to invoke SCOPIC remuneration unless it is necessary and there is a genuine “threat of damage to the environment”.

Clause 10 is “Duties of Contractor”. It provides for the requirement of the salvor to use his “best endeavours and prevent or minimise damage to environment” as in the LOF itself.
Clause 11 is “Shipowner’s Casualty Representative (SCR)”. It provides that owners may appoint a SCR at their sole option from the time the SCOPIC Clause is invoked according to Appendix B.

Taking Appendix B into consideration, this clause means as soon as SCOPIC has been invoked, the shipowner can appoint a SCR, to monitor the salvage services and be kept fully advised as to how the operation is to be carried out. The SCR is chosen from a panel appointed by the SCR Committee comprising of representatives of Clubs, the ISU, IUMI and the International Chamber of Shipping which will meet annually in London for this purpose and to review the tariff rates. The SCR will not in any way impinge on the authority of the Salvage Master, who will always remain in overall control and responsible for the operation. It will, however, be incumbent upon the Salvage Master to keep the SCR fully advised and listen to his views. The Salvage Master will be required to make daily reports and the SCR to either endorse those reports, or make clear with what aspect he disagrees. If the SCR disagrees with any particular daily salvage report the SCR can publish a dissenting report. At the end of the services the SCR publishes the SCR’s final salvage report setting out the facts and circumstances of the casualty and the salvage operation, the tug’s personnel and equipment employed by the contractor in performing the operation and the calculation of the SCOPIC remuneration.

This provision is particularly important to the P&I Clubs, who have long felt that they have not been kept sufficiently advised as to the progress of the salvage operations, which may ultimately affect their interests. (This is also a reason for the creation of SCOPIC.)

Clause 12 is “Special Representatives”. It provides that at any time after the SCOPIC clause has been invoked, the lead H&M underwriters and one cargo owner or his underwriters may each appoint one Special Representative (called respectively the
Special Hull Representative and Special Cargo Representative) to attend the casualty and to report on the salvage operation according to Appendix C. Whoever appoints the special representative pays for him. Special Representatives do not have to be chosen from the SCR panel but must be technical men and not lawyers.

According to Appendix C, the salvage master, the shipowners and the SCR are obliged to co-operate with the special representatives and permit them to have full access to the vessel to observe the salvage operation and inspect such of the ship’s documents as are relevant to the salvage operation. It will be the job of the special representatives to report back to whoever appoints them.

The introduction of special representatives is a significant improvement with regard to the position of marine cargo underwriters as it enables them to get a representative on board the vessel at an early stage who will keep them properly informed. The salvage master’s daily salvage reports, the SCR’s final salvage report and the report of the special cargo representative make marine cargo underwriters being informed much better than they ever have been in the past at a much earlier stage. They can estimate their potential liabilities with much greater accuracy.

However, SCOPIC also recognises and addresses the need to limit extraneous people on casualties. Appendix C provides that the contractor can limit access to any surveyor or representative (other than the SCR and Special Representatives) if he reasonably feels their presence will substantially impede or endanger the salvage operation.

Clause 13 is “Pollution Prevention”. It provides that SCOPIC remuneration includes prevention and removal of pollution in the immediate vicinity of the vessel so far as necessary for proper salvage.
Clause 14 is “General Average”. It provides that SCOPIC remuneration in excess of Article 13 award is not General Average; the shipowner alone is liable to pay SCOPIC remuneration in General Average or under his H&M policy.

This means that "liability to pay SCOPIC is the shipowner's, and none of it can be " off-loaded" on to cargo interests, or indeed the vessel's own hull underwriters, through the mechanism of General Average." (Harvey, 1999)

Clause 15 is about dispute. It provides that any dispute regarding the SCOPIC Clause or SCOPIC operations must be referred to a Lloyd's Arbitrator.

5.3 Some Comments on SCOPIC

The SCOPIC Clause, as a solution to the problems of the assessment mechanism of special compensation, of course has some advantages for the shipowner as well as for the salvor.

From the shipowner and P&I Clubs' perspective, the need for arbitration on special compensation awards will be much less than before. The problem areas (environmental threat, geographical restriction, tug rates, and uplift) have all been settled. Owners and Clubs have much more control over, or at least have knowledge of, what happens during salvage. The shipowners' right to terminate under Clause 9 of SCOPIC is clearer than the right under Clause 4 of LOF. The uplift is capped at 25% (under Article 14 it could be up to 100%).

From the salvors' perspective, it is no longer necessary for them to prove environmental threat and to overcome any geographical restriction defence; they will be paid profitable
tug rates; cash flow problems will be eased and security is more certain, which is absolutely favoured by the salvor.

The disadvantages of SCOPIC are as follows:

For the salvor’s part, the first disadvantage is about security. For the salvor, the greatest concern must be the fear that security will not be provided by the P & I Clubs. The Clubs’ code of conduct that accompanies SCOPIC does not provide the reassurance that many lawyers would consider adequate. Mike Lacey (1999), special adviser of the ISU, says that: “The ISU would have liked some binding, enforceable commitment incorporated into SCOPIC, but you have to be realistic”

Of course salvors would like to see P&I Clubs being legally obliged to give SCOPIC security at the outset of every case, but that would just not be practicable. Clubs are under no obligation under their rules to give guarantees. They rightly felt they had to preserve their right to withhold cover when terms had been breached or calls not paid. They felt they had given as much as they can. However, at least now salvors know that they have security within two working days, while in the case of Article 14, it could have taken many months to get security.

The situation might be aggravated if salvors start to invoke SCOPIC as a matter of routine. The salved value of the vessel and its cargo is crucial to the choice between using SCOPIC or Article 14. While the value of the vessel is relatively easy to determine, that of the cargo may well be tied up in documentation in the hands of various cargo owners. Valuation can be notoriously difficult, especially in the case of containerized cargo. Given the difficulty of valuation, invoking SCOPIC may become a matter of routine, in which case clubs might object to repeatedly putting up security.
In fact, the liability of SCOPIC is heavily dependent on trust within the salvage industry that the clubs will put up security. If P & I Club are tempted to take a view on the appropriateness of security, rather than providing it automatically, the entire system may will be put at risk. Nevertheless, in reality, earlier knowledge will make no difference to the salvor who will have entered into a salvage contract and from that moment will have committed itself to conducting the salvage operation to completion. Consequently, in this circumstance, from the point of salvors, it is not a favourable position.

The second problem is about uplift. This provision is an obvious disadvantage for salvors as they can never recover more than a 25 percent of uplift. (Lawford, 1999)

The third problem is that there is a risk that the shipowner terminate the obligation to pay SCOPIC remuneration. (Lawford, 1999) The clause 9 (ii) entitles the Clubs to bring its SCOPIC liability to an end where they think for example that further work is pointless or the contractor is not performing adequately.

The fourth problem is that SCOPIC is relatively complex, especially for the salvor who is not familiar with LOF and hasn’t carried out LOF salvage operation. It is difficult for this salvor to make a decision on whether he should invoke SCOPIC as there is a risk of 25 percent discount of difference between Article 13 awarded and SCOPIC remuneration.

The fifth problem is about tariff rate. The tariff rates in SCOPIC are currently restricted to equipment “reasonably used” and do not include equipment “reasonably mobilised” but not used. In this circumstance, the salvors are to be encouraged to pull out all the stops and properly prepare for an eventuality. “The precise work involved in any salvage operation is seldom known in the beginning and a salvage store is rarely at hand in the remote areas in which salvage often takes place.” (Bishop, 1999b)
Moreover, problems also exit in hiring in additional equipment for SCOPIC salvage. Since the salvor can only recover costs at the standard SCOPIC rate, it is trapped if it has to hire equipment at a rate above that. Having signed the contract, the salvor would be obliged to follow through with the salvage, and would simply have to take the additional cost of hired equipment off his own bottom line. (Bishop, 2000)

For the shipowner and P&I clubs, SCOPIC also has disadvantages. First of all, the salvor may recover more for the agreed tug rates than they would under the Nagasaki Spirit decision, but this is not certain because of the different utilisation factors. (Lawford, 1999) “The tariff rates were negotiated between the ISU and the P&I Clubs. They were intended to be at profitable rates as opposed to the fair rate under Article 14…under the Nagasaki Spirit judgement are supposed to be not profitable ” (Bishop, 2000) Secondly, shipowner and clubs have given up the environmental threat and geographical restriction defences.

Furthermore, for safety reasons, extraneous personnel involved with a salvage is limited to one single owner’s representative (SCR). This means that one individual would be representing the owner, the P&I Club and the property underwriter. But it is the P&I Club alone that chooses and pays for the SCR. The interests of property underwriters, however, could not conflict more with those of P&I, and they are suspicious. Finally, SCR fees are also a matter of contention. Currently they are shared by P&I and property underwriters, but this is based on a code of practice, and is not legally enforceable. The issue is just one more uncertainty which will have to be dealt with.

Finally, another disadvantage is about the uplift. Article 14 pays salvors’ costs along with an uplift up to 100% if they are extremely successful in limiting environmental damage. But under SCOPIC it is regardless of success that a 25% uplift is guaranteed.
So in this case, it is feared by public interest that the salvors may turn up and do the minimum possible to earn the 25 percent.

5.4 Recommendations

Based on an analysis of the problems associated with SCOPIC, some recommendations are submitted below.

For the problem of security, it is suggested that if a salvor is worried about this problem, he should insert an additional clause in the salvage agreement giving him the right to treat the entire salvage agreement as null and void, should security fail to materialise. For the problem of difficult decision making, the clause should be designed and drafted into simple and easy text for the purpose of better understanding and use.

For the problem of uplift as well as security, the solution, it is suggested, is that a “salvage fund” should be established in the sense of the environment and human death and injury when the salvor signs an LOF incorporating by SCOPIC. First of all, such a fund would act as a kind of ancillary guarantee and such guarantee is automatically enforceable as soon as SCOPIC is invoked without any procedure and formalities required by the P&I Club. But it should be noted that such fund guarantee is only supplementary to the P&I clubs undertaking and temporary substitution for the purpose of speedy reaction of the salvor. Furthermore, the salvage fund should encourage the salvor to avert environmental damage to the utmost extent. For instance, if the salvage is extremely successful, the salvor will be awarded extra bonus besides 25% uplift under SCOPIC provisions. It is envisaged that the salvage fund could be constituted by international convention and its members include both coastal and landlocked states with contributions to the fund.
Consequently, salvors, with the knowledge that they would be secured, adequately
remunerated and offered a desirable bonus if they do their endeavors, would be in a
position to react promptly in the heat of the moment without the need to make decisions.
It appears that ship owners, salvors, P&I clubs, property underwriters and environmental
interests can achieve much constructive progress without any conflict. Moreover, the
salvage fund could be to provide subsidised financing and assistance to professional
salvors to increase their equipment and improve the ability to respond to emergencies for
the need to perform salvage services.

5.5 Case Study

In generally terms, the Clause has been successful in achieving its aims and favoured by
those who have worked with it. At the time of writing, there have been 15 SCOPIC
cases of which Lloyd's have had notice. So far no cases have been taken to Arbitration
and none are pending. This perhaps illustrates that the Clause is working well.

The author has obtained two SCOPIC cases from the United Kingdom P&I Club. They
are described in the following paragraphs. It is very interesting to note that the second
one involves the discount provisions. This case will illustrate the effect of the penalty
provisions within SCOPIC in circumstances where the agreed Article 13 award is higher
than the SCOPIC calculation. It also illustrates that it would be quite difficult for the
salvor to make a decision while the potential salved value is relatively low.

Case 1
The casualty involved the grounding of the ship Marimar off Eritrea in April 1999. The
salvage service was based on LOF 1995 and SCOPIC was rendered by Titan Maritime
Industries, Inc, which is an American salvage company and also a member of the
International Salvage Union. SCOPIC security was provided by the P&I Club. Part of
the cargo was lightened for the purpose of refloating. The casualty ship was redelivered on 5 June 1999. The SCOPIC remuneration was agreed at USD 1,823,461. The Article 13 award was agreed at USD 942,750. Then the SCOPIC payment together with interest and costs was agreed at USD 902,837.

There was no dispute and everything was settled amicably.

**Case 2**

This case has been obtained from the report dated 25 Feb.2000 of Samantha Lee of the United Kingdom P&I Club. The report focuses on the results of the SCOPIC calculations and salvage remuneration. Therefore there is not much detail regarding the factual situation of the casualty, the risk and the salvage operation.

Ship Suthathip Naree was grounded at Taichung on 26 November 1999. The salvor was Smit International Singapore. After the salvage services were over, a meeting was held on 24 February, 2000 between the representatives of the salvor, the Swedish Club (SC) and the U.K. P&I Club, who were the parties involved in this case. The SCR, Mr. Lars Landelius from the Swedish Club attended the meeting. On the whole, the negotiations were amicable. The issues regarding the vessel value and the SCOPIC calculations and so on are set out below.

1) vessel value:

Smit argued that the vessel's value was around USD 1.2 million, based on a valuation obtained from a Dutch broker, who had apparently sold a similar vessel at this price. SC offered two valuations from Galbraith and Aries setting the value at USD 570,000 and USD 800,000, respectively. A valuation figure of USD 750,000 was eventually agreed, for purposes of settlement discussions.
2) SCOPIC calculations:
Smit tendered a list of expenses incurred, at a total figure of USD 229,871.94 (before uplift). There was considerable querying of the expenses from the SCR (Captain Landelius). The finally agreed SCOPIC calculation was USD 230,500, inclusive of the uplifts of 25% on owned equipment and 10% on hire equipment and out of pocket expenses.

3) Remuneration:
Smit indicated they were looking for remuneration in excess of USD 230,500 and proposed 60% of the vessel value i.e., $450,000. This was rejected on the basis that the salvage was not a technically difficult job and arbitrators would be very unlikely to give an award at this level for such a case. After some vigorous but cordial exchanges, remuneration was eventually agreed at USD 310,000 net. During the negotiations mention was made of the delay in the start of salvage operations due to the entire Smit team being detained at the Taipei airport for lack of visas, and owner's team having to rescue Smit's team from the water after their Zodiac had capsized.

4) The parties arrived at this figure after taking into account the 25% discount/penalty for invoking SCOPIC, the payment on account made by SC for some equipment, and the fluctuation in currency rates.

5) Payment was expected to be made by SC within 14 days.
CHAPTER VI
SUMMARY AND CONCLUSIONS

An international diplomatic conference held under IMO auspices in 1989 concluded a new salvage convention, which brought about profound changes to the nature of maritime salvage. The previous convention of 1910 had been based on the traditional principle of "No Cure-No Pay". The fear under the old convention was that salvors might hesitate to attempt salving a ship where the risk of failure was great and the costs likely to be incurred were high.

The intention of the 1989 Salvage Convention was to encourage salvors to act in all such cases involving a threat to the environment. Under the 1989 Convention the main salvage award is still based on “No Cure-No Pay”. However, the salvage award is to take into account “the skill and efforts of the salvors in preventing or minimising damage to the environment”, as well as the traditional factors of salved value, danger, out-of-pocket expenses, success, time, and skill. The basic “No Cure-No Pay” award is dealt with under Article 13. The Salvage Convention also introduces a new concept known as "special compensation". Under this regime, where the salvor works on a ship or cargo, which threatens damage to the environment, and has failed to earn an award sufficient under Article 13 to cover his costs, he is entitled to special compensation. Under Article 14, this special compensation is based upon the cost of personnel and equipment used and out-of-pocket expenses incurred to the extent that they exceed any Article 13 award. In addition, if he has prevented or minimised environmental damage,
the Article 14 award is subject to an uplift of 30% up to a maximum of 100% in appropriate cases.

The Convention entered into force in 1996 but had already been introduced into LOF 1990 and LOF 1995. Thus, most salvage operations carried out under these two standard form agreements have been subject to the special compensation regime for some time.

There have been a number of problems with regard to the practical applications of Articles 13 and 14. These problems have been analytically discussed in Chapters Four and Five. Some of the problems are of concern to shipowners and the P & I Clubs, whilst others are of particular concern to salvors. The assessment of special compensation under the existing regime has proved to be time consuming, cumbersome, uncertain and expensive to operate.

In order to resolve these problems, the salvors, P & I Clubs and property underwriters undertook negotiations with a view to agreeing to a simplified framework for special compensation. A system was envisaged which would promote fast response to casualties but reduce the potential for legal disputes. As a result of these negotiations, the SCOPIC Clause has been developed as an alternative to Article 14 for dealing with special compensation. The SCOPIC Clause is incorporated by reference into LOF.

Generally speaking, the Clause, so far, has been successful in achieving its aims. Most people involved in the commercial salvage business are content with SCOPIC. However, like other new devices which take time to settle, SCOPIC also has some advantages and disadvantages not only for the shipowners and P&I Clubs but also for the salvors. Although, it was inevitable that it would undergo teething problems, SCOPIC is being monitored and if deficiencies in its drafting or operation become apparent during the course of the current two-year trial period, they will be addressed. It is believed that with
continuous annual review, the parties concerned will eventually learn to cope with the deficiencies. A more preferable assessment of salvage awards on behalf of more interests concerned will inevitably appear.

Global awareness of the need for protection of the marine environment is increasing rapidly. This acceleration of public concern will undoubtedly continue to have a major impact on the salvage industry. All parties involved in commercial salvage including the salvage industry should exert more efforts to make the application of the related clause simpler, easier and more user friendly.
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AND WORKS CONSULTED


[Http://www.lloyds.com/agencysalvage/salvage/action/staticis.htm](http://www.lloyds.com/agencysalvage/salvage/action/staticis.htm)


[Http://www.lloyds.com/agencysalvage/salvage/body.htm](http://www.lloyds.com/agencysalvage/salvage/body.htm)


Appendix 1

SCOPIC CLAUSE

1. General
This SCOPIC clause is supplementary to a Lloyd's Form Salvage Agreement "No Cure - No Pay" 1995 ("Main Agreement"). The definitions in the Main Agreement are incorporated into this SCOPIC clause. If the SCOPIC clause is inconsistent with any provisions of the Main Agreement or inconsistent with the law applicable hereto, the SCOPIC clause, once invoked under clause 2 hereof, shall override such other provisions to the extent necessary to give business efficacy to the agreement. Subject to the provisions of Clause 4 hereof, the method of assessing Special Compensation under Convention Article 14 as incorporated into the Main Agreement ("Article 14") shall be substituted by the method of assessment set out hereinafter. For the purposes of time and time limits the services hereunder will be treated in the same manner as salvage.

2. Invoking the SCOPIC Clause
The Contractor shall have the option to invoke by written notice to the owners of the vessel the SCOPIC clause set out hereafter at any time of his choosing regardless of the circumstances and, in particular, regardless of whether or not there is a "threat of damage to the environment". The assessment of SCOPIC remuneration shall commence from the time the written notice is given to the owners of the vessel and services rendered before the said written notice shall not be remunerated under this SCOPIC clause at all but in accordance with Convention Article 13 (as incorporated into the Main Agreement "Article 13").

3. Security for SCOPIC Remuneration
(i) The owners of the vessel shall provide to the Contractor within 2 working days (excluding Saturdays and Sundays and holidays usually observed at Lloyd's) after receiving written notice from the contractor invoking the SCOPIC clause, a bank guarantee or P&I Club letter (hereinafter called "the Initial Security") in a form reasonably satisfactory to the Contractor providing security for his claim for SCOPIC remuneration in the sum of US$3 million, inclusive of interest and costs. (ii) If, at any time after the provision of the Initial Security the owners of the vessel reasonably assess the SCOPIC remuneration plus interest and costs due hereunder to be less than the security in place, the owners of the vessel shall be entitled to require the Contractor to reduce the security to a reasonable sum and the Contractor shall be obliged to do so once a reasonable sum has been agreed.
(iii) If at any time after the provision of the Initial Security the Contractor reasonably assesses the SCOPIC remuneration plus interest and costs due hereunder to be greater than the security in place, the Contractor shall be entitled to require the owners of the vessel to increase the security to a reasonable sum and the owners of the vessel shall be obliged to do so once a reasonable sum has been agreed.
(iv) In the absence of agreement, any dispute concerning the proposed Guarantor, the form of the security or the amount of any reduction or increase in the security in place shall be resolved by the Arbitrator.

4. Withdrawal
If the owners of the vessel do not provide the Initial Security within the said 2 working days, the Contractor, at his option, and on giving notice to the owners of the vessel shall be entitled to withdraw from all the provisions of the SCOPIC clause and revert to his rights under the Main Agreement including Article 14 which shall apply as if the SCOPIC clause had not existed.

5. Tariff Rates
(i) SCOPIC remuneration shall mean the total of the tariff rates of personnel, tugs and other craft; portable salvage equipment; out of pocket expenses; and bonus due.
(ii) SCOPIC remuneration in respect of all personnel, tugs and other craft; and portable salvage equipment shall be assessed on a time and material basis in accordance with the Tariff set out in Appendix "A". This tariff will apply until reviewed and amended by the SCR Committee in accordance with Appendix B(1)(b). The tariff rates which will be used to calculate SCOPIC remuneration are those in force at the time the salvage services take place.
(iii) "Out of pocket" expenses shall mean all those monies reasonably paid by or for and on behalf of the Contractor to any third party and in particular includes the hire of men, tugs, other craft and equipment used and other expenses reasonably necessary for the operation. They will be agreed at cost, PROVIDED THAT:
(a) If the expenses relate to the hire of men, tugs, other craft and equipment from another ISU member or their affiliate(s), the amount due will be calculated on the tariff rates set out in Appendix "A" regardless of the actual cost.
(b) If men, tugs, other craft and equipment are hired by any party who is not an ISU member and the hire rate is greater than the tariff rates referred to in Appendix "A" the actual cost will be allowed in full, subject to the Shipowner's Casualty Representative ("SCR") being satisfied that in the particular circumstances of the case, it was reasonable for the Contractor to hire such items at that cost. If an SCR is not appointed or if there is a dispute, then the Arbitrator shall decide whether the expense was reasonable in all the circumstances.
(iv) In addition to the rates set out above, the Contractor shall be entitled to a standard bonus of 25% of those rates except that if the out of pocket expenses described in sub-paragraph 5(b)(b) exceed the applicable tariff rates in Appendix "A" the Contractor shall be entitled to a bonus such that he shall receive in total
(a) The actual cost of such men, tugs, other craft and equipment plus 10% of the tariff rate, or
(b) The tariff rate for such men, tugs, other craft and equipment plus 25% of the tariff rate whichever is the greater.

6. Article 13 Award
(i) The salvage services under the main agreement shall continue to be assessed in accordance with Article 13, even if the Contractor has invoked the SCOPIC clause. SCOPIC remuneration as assessed under Clause 5 above will be payable only by the owners of the vessel and only to the extent that it exceeds the total Article 13 Award payable by all salvors interests (including cargo, bunkers, lubricating oil and stores) after currency adjustment but before interest and costs even if the Article 13 award or any part of it is not recovered.
(ii) The salvage award under Article 13 shall not be diminished by reason of the exception to the principle of "No Cure - No Pay" in the form of SCOPIC remuneration.

1.8.1999
7. **Discount**  
If the SCOPIC clause is invoked under clause 2 hereof and the Article 13 Award or settlement (after currency adjustment but before interest and costs) under the Main Agreement is greater than the assessed SCOPIC remuneration then, notwithstanding the actual date on which the SCOPIC remuneration provisions were invoked, the said Article 13 Award or settlement shall be discounted by 25% of the difference between the said Article 13 Award or settlement and the amount of SCOPIC remuneration that would have been assessed had the SCOPIC remuneration provisions been invoked on the first day of the services.

8. **Payment of SCOPIC Remuneration**  
(i) The date for payment of any SCOPIC remuneration which may be due hereunder will vary according to the circumstances.  
   a) If there is no potential salvage award within the meaning of Article 13 as incorporated into the Main Agreement then, subject to Appendix B(5)(c)(iv), the undisputed amount of SCOPIC remuneration due hereunder will be paid by the owners of the vessel within 1 month of the presentation of the claim. Interest on sums due will accrue from the date of termination of the services until the date of payment at US prime rate plus 1%.  
   b) If there is a claim for an Article 13 salvage award as well as a claim for SCOPIC remuneration, subject to Appendix B(5)(c)(iv), 75% of the amount by which the assessed SCOPIC remuneration exceeds the total Article 13 security demanded from ship and cargo will be paid by the owners of the vessel within 1 month and any undisputed balance paid when the Article 13 salvage award has been assessed and falls due. Interest will accrue from the date of termination of the services until the date of payment at the US prime rate plus 1%.

(ii) The Contractor hereby agrees to give an indemnity in a form acceptable to the owners of the vessel in respect of any overpayment in the event that the SCOPIC remuneration due ultimately proves to be less than the sum paid on account.

9. **Termination**  
(i) The Contractor shall be entitled to terminate the services hereunder by written notice to owners of the vessel with a copy to the SCR (if any) and any Special Representative appointed if he reasonably anticipates that the total cost of his services to date and the services that will be needed to fulfill his obligations hereunder to the property (calculated by means of the tariff rate but before the bonus conferred by Clause 5(III) hereof) will exceed the sum of:-  
   a) The value of the property capable of being salvaged;  
   b) All sums to which he will be entitled as SCOPIC remuneration.

(ii) The owners of the vessel may at any time terminate the obligation to pay SCOPIC remuneration after the SCOPIC clause has been invoked under Clause 2 hereof provided that the Contractor shall be entitled to at least 5 clear days' notice of such termination. In the event of such termination, the assessment of SCOPIC remuneration shall take into account all monies due under the tariff rates set out in Appendix A hereof including time for demobilisation to the extent that such time did reasonably exceed the 5 days' notice of termination.

(iii) The provision to terminate the SCOPIC contract contained in Clause 9(i) and 9(ii) above shall only apply if the Contractor is not restrained from demobilising his equipment by Government, Local or Port Authorities or any other officially recognised body having jurisdiction over the area where the services are being rendered.

10. **Duties of Contractor**  
The duties and liabilities of the Contractor shall remain the same as under the Main Agreement, namely to use his best endeavours to save the vessel and property thereon and in so doing to prevent or minimise damage to the environment.

11. **Shipowner's Casualty Representative ("SCR")**  
Once this SCOPIC clause has been invoked in accordance with clause 2 hereof the owners of the vessel may at their sole option appoint an SCR to attend the salvage operation in accordance with the terms and conditions set out in Appendix B.

12. **Special Representatives**  
At any time after the SCOPIC clause has been invoked the Hull and Machinery underwriter (or, if more than one, the lead underwriter) and one owner or underwriter of all or part of any cargo on board the vessel may each appoint one special representative (hereinafter called respectively the "Special Hull Representative" and the "Special Cargo Representative" and collectively called the "Special Representatives") at the sole expense of the appointor to attend the casualty to observe and report upon the salvage operation on the terms and conditions set out in Appendix C hereof. Such Special Representatives shall be technical men and not practising lawyers.

13. **Pollution Prevention**  
The assessment of SCOPIC remuneration shall include the prevention of pollution as well as the removal of pollution in the immediate vicinity of the vessel insofar as this is necessary for the proper execution of the salvage but not otherwise.

14. **General Average**  
SCOPIC remuneration shall not be a General Average expense to the extent that it exceeds the Article 13 award; any liability to pay SCOPIC remuneration shall be that of the Shipowner alone and no claim whether direct, indirect, by way of indemnity or recourse or otherwise relating to SCOPIC remuneration in excess of the Article 13 award shall be made in General Average or under the vessel's Hull and Machinery Policy by the owners of the vessel.

15. Any dispute arising out of this SCOPIC clause or the operations hereunder shall be referred to Arbitration as provided for under the Main Agreement.
APPENDIX A (SCOPIC)

1. PERSONNEL

(a) The daily tariff rate, or pro rata for part thereof, for personnel reasonably engaged on the contract, including any necessary time in proceeding to and returning from the casualty, shall be as follows:

- Office administration, including communications: US$ 1,000
- Salvage Master: US$ 1,500
- Naval Architect or Salvage Officer/Engineer: US$ 1,250
- Assistant Salvage Officer/Engineer: US$ 1,000
- Diving Supervisor: US$ 1,000
- Diver: US$ 750
- Salvage Foreman: US$ 750
- Riggers, Fitters, Equipment Operators: US$ 800
- Specialist Advisors – Fire Fighters, Chemicals, Pollution Control: US$ 1,000

(b) The crews of tugs, and other craft, normally aboard that tug or craft for the purpose of its customary work are included in the tariff rate for that tug or craft but when because of the nature and/or location of the services to be rendered, it is a legal requirement for an additional crew member or members to be aboard the tug or craft, the cost of such additional crew will be paid.

(c) The rates for any personnel not set out above shall be agreed with the SCR or, failing agreement, be determined by the Arbitrator.

2. TUGS AND OTHER CRAFT

(a) (i) Tugs, which shall include salvage tugs, harbor tugs, anchor handling tugs, coastal/ocean towing tugs, off-shore support craft, and any other work boat in excess of 500 b.h.p., shall be charged at the following rates, exclusive of fuel or lubricating oil, for each day, or pro rata for part thereof, that they are engaged in the service, including proceeding to and from the casualty, on the basis of their certificated b.h.p.:

<table>
<thead>
<tr>
<th>B.H.P. Range</th>
<th>Rate – US$</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to 5,000 b.h.p.</td>
<td>2.00</td>
</tr>
<tr>
<td>between 5,001 &amp; 10,000 b.h.p.</td>
<td>1.50</td>
</tr>
<tr>
<td>between 10,001 &amp; 20,000 b.h.p.</td>
<td>1.00</td>
</tr>
<tr>
<td>over 20,000 b.h.p.</td>
<td>0.50</td>
</tr>
</tbody>
</table>

(ii) Any tug which has aboard certified fire fighting equipment shall, in addition to the above rates, be paid:

- US$500 per day, or pro rata for part thereof, if equipped with FI FI 0.5
- US$1,000 per day, or pro rata for part thereof, if equipped with FI FI 1.0

for that period in which the tug is engaged in firefighting necessitating the use of the certified fire fighting equipment.

(iii) Any tug which is certified as “Ice Class” shall, in addition to the above, be paid US$1,000 per day, or pro rata for part thereof, when forcing or breaking ice during the course of services including proceeding to and returning from the casualty.

(b) Any launch or work boat of less than 500 b.h.p. shall, exclusive of fuel and lubricating oil, be charged at a rate of US$3.00 for each b.h.p.

(c) Any other craft, not falling within the above definitions, shall be charged out at a market rate for that craft, exclusive of fuel and lubricating oil, such rate to be agreed with the SCR or, failing agreement, determined by the Arbitrator.

(d) All fuel and lubricating oil consumed during the services shall be paid at cost.

(e) For the avoidance of doubt, the above rates shall include all equipment normally aboard the tug or craft, but shall not include any portable salvage equipment that may be aboard the tug or craft and such equipment, if used, shall be charged in accordance with the rates for portable salvage equipment. The SCR shall confirm that such equipment was used and required for the salvage services.

3. PORTABLE SALVAGE EQUIPMENT

(a) The daily tariff, or pro rata for part thereof, for all portable salvage equipment reasonably used during the services, including any time necessary for mobilisation and demobilisation, shall be as follows:

<table>
<thead>
<tr>
<th>Generators</th>
<th>Rate – US$</th>
<th>Distribution Boards</th>
<th>Rate – US$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 50 kW</td>
<td>60</td>
<td>Up to 50 kW</td>
<td>60</td>
</tr>
<tr>
<td>51 to 100 kW</td>
<td>125</td>
<td>51 to 100 kW</td>
<td>125</td>
</tr>
<tr>
<td>101 to 300 kW</td>
<td>200</td>
<td>101 to 300 kW</td>
<td>200</td>
</tr>
<tr>
<td>Over 301 kW</td>
<td>350</td>
<td>Over 301 kW</td>
<td>350</td>
</tr>
<tr>
<td>Portable Inert Gas</td>
<td>1,200</td>
<td>Protective Clothing</td>
<td>85</td>
</tr>
<tr>
<td>Systems</td>
<td></td>
<td>Breathing Gear.</td>
<td>50</td>
</tr>
<tr>
<td>1,000m³/hour</td>
<td></td>
<td>Hazardous Environment</td>
<td>100</td>
</tr>
<tr>
<td>1,500m³/hour</td>
<td></td>
<td>Suit</td>
<td></td>
</tr>
<tr>
<td><strong>Compressors</strong></td>
<td>Rate - US$</td>
<td><strong>Pollution Control Equipment</strong></td>
<td>Rate - US$</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>------------</td>
<td>-----------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>High Pressure</td>
<td>100</td>
<td>Oil Boom, 24&quot;, per 10 metres</td>
<td>30</td>
</tr>
<tr>
<td>185 Cfm</td>
<td>150</td>
<td>Oil Boom, 36&quot;, per 10 metres</td>
<td>100</td>
</tr>
<tr>
<td>600 Cfm</td>
<td>250</td>
<td>Oil Boom, 48&quot;, per 10 metres</td>
<td>195</td>
</tr>
<tr>
<td>1200 Cfm</td>
<td>400</td>
<td><strong>Diving Equipment</strong></td>
<td></td>
</tr>
<tr>
<td>Air Manifold</td>
<td>10</td>
<td>Decompression Chamber, 2 man, including compressor</td>
<td>500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 man, including compressor</td>
<td>700</td>
</tr>
<tr>
<td>Blower; 1,500 m³/min.</td>
<td>850</td>
<td>Hot Water Diving Assembly</td>
<td>250</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Underwater Magnets</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Underwater Drill</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Shallow Water Dive Spread</td>
<td>225</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Lighting Systems</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Pumping Equipment</strong></td>
<td></td>
<td>Lighting String, per 50 feet</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Light Tower</td>
<td>50</td>
</tr>
<tr>
<td><strong>Electrical Submersible</strong></td>
<td></td>
<td>Underwater Lighting System, 1,000 watts</td>
<td>75</td>
</tr>
<tr>
<td>Air</td>
<td>75</td>
<td><strong>Hoses</strong></td>
<td></td>
</tr>
<tr>
<td>2&quot;</td>
<td></td>
<td>Air Hose, per 30 metres or 100 feet</td>
<td>20</td>
</tr>
<tr>
<td>2&quot;</td>
<td></td>
<td>2&quot; by 30 metres or 100 feet</td>
<td>40</td>
</tr>
<tr>
<td>2&quot;</td>
<td>75</td>
<td>Layflat, per 6 metres or 20 feet</td>
<td>10</td>
</tr>
<tr>
<td>2&quot;</td>
<td>150</td>
<td>4&quot; by 6 metres or 20 feet</td>
<td>15</td>
</tr>
<tr>
<td>2&quot;</td>
<td>500</td>
<td>6&quot; by 6 metres or 20 feet</td>
<td>20</td>
</tr>
<tr>
<td>2&quot;</td>
<td></td>
<td><strong>Rigging</strong></td>
<td></td>
</tr>
<tr>
<td>4&quot;</td>
<td>15</td>
<td><strong>Fenders</strong></td>
<td></td>
</tr>
<tr>
<td>2&quot;</td>
<td>15</td>
<td>Yokohama</td>
<td></td>
</tr>
<tr>
<td>2&quot;</td>
<td>40</td>
<td>1,000 x 2,000m.</td>
<td>75</td>
</tr>
<tr>
<td>2&quot;</td>
<td>150</td>
<td>2,500 x 5,000m.</td>
<td>150</td>
</tr>
<tr>
<td>3&quot;</td>
<td>250</td>
<td>3,500 x 6,500m.</td>
<td>250</td>
</tr>
<tr>
<td><strong>Low Pressure Inflatable</strong></td>
<td>70</td>
<td><strong>Welding &amp; Cutting Equipment</strong></td>
<td></td>
</tr>
<tr>
<td>3 metres</td>
<td></td>
<td>Bolt Gun</td>
<td>300</td>
</tr>
<tr>
<td>6 metres</td>
<td></td>
<td>Gas Detector</td>
<td>100</td>
</tr>
<tr>
<td>9 metres</td>
<td>70</td>
<td>Hot Tap Machine, including supporting equipment</td>
<td>1,000</td>
</tr>
<tr>
<td>12 metres</td>
<td>150</td>
<td>Oxy-acetylene Surface Cutting Gear</td>
<td>25</td>
</tr>
<tr>
<td>16 metres</td>
<td>250</td>
<td>Underwater Cutting Gear</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>250</td>
<td>Underwater Welding Kt</td>
<td>50</td>
</tr>
<tr>
<td>400 Amp Welder</td>
<td>200</td>
<td><strong>Miscellaneous Equipment</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Air Bags, less than 5 tons lift</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5 to 15 tons lift</td>
<td>200</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Air Lift, 6&quot;</td>
<td>100</td>
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<tr>
<td></td>
<td></td>
<td>6&quot;</td>
<td>200</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Air Tugger, up to 3 tons</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ballast/Fuel Oil Storage Bins, 50,000 litres</td>
<td>50</td>
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<tr>
<td></td>
<td></td>
<td>Damage Stability Computer, portable</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Damage Stability Computer and Software</td>
<td>250</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Echo Sounder, portable</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Extension Ladder</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hydraulic Jack, up to 100 tons</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hydraulic Powerpack</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pressure washer, water</td>
<td>400</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Steam</td>
<td>450</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rigging Package, heavy</td>
<td>400</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Light</td>
<td>200</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rock, Drill, Splitter</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Steel Saw</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tifors, up to 5 tonnes</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Thermal Imaging Camera</td>
<td>250</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tool Package, per set</td>
<td>175</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ventilation Package</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td></td>
<td>VHF Radio</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Z Boat, including outboard up to</strong> 14 feet</td>
<td>200</td>
</tr>
<tr>
<td></td>
<td></td>
<td>over 14 feet</td>
<td>350</td>
</tr>
</tbody>
</table>

(b) Any portable salvage equipment used but not set out above shall be charged at a rate to be agreed with the SCR or, failing agreement, determined by the Arbitrator.

(c) The total charge for each item of portable salvage equipment, owned by the contractor, shall not exceed its replacement cost multiplied by 1.5.

(d) The replacement cost of any portable salvage equipment lost or destroyed during the services shall be paid provided that the total of the replacement cost and daily cost of an individual item does not exceed its replacement cost multiplied by 1.5.

(e) All consumables such as welding rods, boiler suits, small ropes etc. shall be charged at cost plus 10%.
APPENDIX B (SCOPIC)

1. (a) The SCR shall be selected from a panel (the "SCR Panel") appointed by a Committee (the "SCR Committee") comprising of representatives appointed by the following:

- 3 representatives from the International Group of P and I Clubs
- 3 representatives from the ISU
- 3 representatives from the IUMI
- 3 representatives from the International Chamber of Shipping

(b) The SCR Committee shall be responsible for an annual review of the tariff rates as set out in Appendix A.

(c) The SCR Committee shall meet once a year in London to review, confirm, reconfirm or remove SCR Panel members.

(d) Any individual may be proposed for membership of the SCR Panel by any member of the SCR Committee and shall be accepted for inclusion on the SCR Panel unless at least four votes are cast against his inclusion.

(e) The SCR Committee shall also set and approve the rates of remuneration for the SCR for the next year.

(f) Members of the SCR Committee shall serve without compensation.

(g) The SCR Committee's meetings and business shall be organised and administered by the Salvage Arbitration Branch of the Corporation of Lloyd's (hereinafter called "Lloyd's") who will keep the current list of SCR Panel members and make it available to any person with a bona fide interest.

(h) The SCR Committee shall be entitled to decide its own administrative rules as to procedural matters (such as quorums, the identity and power of the Chairman etc.)

2. The primary duty of the SCR shall be the same as the Contractor, namely to use his best endeavours to assist in the salvage of the vessel and the property thereon and in so doing to prevent and minimise damage to the environment.

3. The Salvage Master shall at all times remain in overall charge of the operation, make all final decisions as to what he thinks is best and remain responsible for the operation.

4. The SCR shall be entitled to be kept informed by or on behalf of the Salvage Master or (if none) the principal contractors' representative on site (hereinafter called "the Salvage Master"). The Salvage Master shall consult with the SCR during the operation if circumstances allow and the SCR, once on site, shall be entitled to offer the Salvage Master advice.

5. (a) Once the SCOPIC clause is invoked the Salvage Master shall send daily reports (hereinafter called the "Daily Salvage Reports") setting out:-

- the salvage plan (followed by any changes thereto as they arise)
- the condition of the casualty and the surrounding area (followed by any changes thereto as they arise)
- the progress of the operation
- the personnel, equipment, tugs and other craft used in the operation that day.

(b) Pending the arrival of the SCR on site the Daily Salvage Reports shall be sent to Lloyd's and the owners of the vessel. Once the SCR has been appointed and is on site the Daily Salvage Reports shall be delivered to him.
(c) The SCR shall upon receipt of each Daily Salvage Report:-

(i) Transmit a copy of the Daily Salvage Report by the quickest method reasonably available to Lloyd's, the owners of the vessel, their liability insurers and (if any) to the Special Hull Representative and Special Cargo Representative (appointed under clause 12 of the SCOPIC clause and Appendix C) if they are on site; and if a Special Hull Representative is not on site the SCR shall likewise send copies of the Daily Salvage Reports direct to the leading Hull Underwriter or his agent (if known to the SCR) and if a Special Cargo Representative is not on site the SCR shall likewise send copies of the Daily Salvage Reports to such cargo underwriters or their agent or agents as are known to the SCR (hereinafter in this Appendix B such Hull and Cargo property underwriters shall be called "Known Property Underwriters")

(ii) If circumstances reasonably permit consult with the Salvage Master and, if satisfied, endorse his Daily Salvage Report, or

(iii) If not satisfied with the Daily Salvage Report, prepare a dissenting report setting out any objection or contrary view and deliver it to the Salvage Master and transmit it to Lloyd's, the owners of the vessel, their liability insurers and to any Special Representatives (appointed under clause 12 of the SCOPIC clause and Appendix C) or, if one or both Special Representatives has not been appointed, to the appropriate Known Property Underwriters.

(iv) If the SCR gives a dissenting report to the Salvage Master in accordance with Appendix B(5)(c)(iii) to the SCOPIC clause, any initial payment due for SCOPIC remuneration shall be at the tariff rate applicable to what is in the SCR's view the appropriate equipment or procedure until any dispute is resolved by agreement or arbitration.

(d) Upon receipt of the Daily Salvage Reports and any dissenting reports of the SCR, Lloyd's shall distribute upon request the said reports to any parties to this contract and any of their property insurers of whom they are notified (hereinafter called "the Interested Persons") and to the vessel's liability insurers.

(e) As soon as reasonably possible after the salvage services terminate the SCR shall issue a report (hereinafter call the "SCR's Final Salvage Report") setting out:

- the facts and circumstances of the casualty and the salvage operation insofar as they are known to him.
- the tugs, personnel and equipment employed by the Contractor in performing the operation.
- A calculation of the SCOPIC remuneration to which the contractor may be entitled by virtue of this SCOPIC clause.

The SCR's Final Salvage Report shall be sent to the owners of the vessel and their liability insurers and to Lloyd's who shall forthwith distribute it to the Interested Persons.

The owners of the vessel shall be primarily responsible for paying the fees and expenses of the SCR. The Arbitrator shall have jurisdiction to apportion the fees and expenses of the SCR and include them in his award under the Main Agreement and, in doing so, shall have regard to the principles set out in any market agreement in force from time to time.
APPENDIX C (SCOPIC)

The Special Representatives

1. The Salvage Master, the owners of the vessel and the SCR shall co-operate with the Special Representatives and shall permit them to have full access to the vessel to observe the salvage operation and to inspect such of the ship's documents as are relevant to the salvage operation.

2. The Special Representative shall have the right to be informed of all material facts concerning the salvage operation as the circumstances reasonably allow.

3. If an SCR has been appointed the SCR shall keep the Special Representatives (if any and if circumstances permit) fully informed and shall consult with the said Special Representatives. The Special Representatives shall also be entitled to receive a copy of the Daily Salvage Reports direct from the Salvage Master or, if appointed, from the SCR.

4. The appointment of any Special Representatives shall not affect any right that the respondent ship and cargo interests may have (whether or not they have appointed a Special Representative) to send other experts or surveyors to the vessel to survey ship or cargo and inspect the ship's documentation or for any other lawful purpose.

5. If an SCR or Special Representative is appointed the Contractor shall be entitled to limit access to any surveyor or representative (other than the said SCR and Special Representative or Representatives) if he reasonably feels their presence will substantially impede or endanger the salvage operation.
CODE OF PRACTICE BETWEEN INTERNATIONAL GROUP OF P&I CLUBS AND LONDON PROPERTY UNDERWRITERS REGARDING THE PAYMENT OF THE FEES AND EXPENSES OF THE SCR UNDER SCOPIC.

The following understanding has been reached between the International Group of P&I Clubs (hereinafter called "Liability Underwriters") and members of the Lloyd's Underwriters' Association and the International Underwriters Association of London (hereinafter called "Property Underwriters") in relation to all future salvage services under Lloyd's Form where the Special Compensation P&I Clubs (SCOPIC) Clause has been invoked by the Contractor.

1. Whereas the primary liability for paying the fees and disbursements of the Shipowner's Casualty Representative ("SCR") rests upon the owner of the vessel, it is agreed that the owner of the vessel shall be reimbursed such fees and disbursements, subject always to the Club Rules and the terms and conditions of Club cover and the terms of any insurance policy or policies covering the salvaged property, in the following proportions:

   - 50% by Liability Underwriters;

   - 50% by Property Underwriters (subject to Clause 2 hereof).

2. (a) Property Underwriters shall pay for 50% of the SCR's fees and disbursements in proportion to the salvaged value of the subject matter insured.

   (b) Should 50% of the SCR's fees and disbursements exceed the salvaged value of the ship and cargo less the Article 13 award, Liability Underwriters agree to reimburse such excess proportion of the said SCR's fees and disbursements to the owners of the vessel.

3. This is a Code of Practice which Liability Underwriters and Property Underwriters shall recommend to their Members and it is not intended that it should have any legal effect.
CODE OF PRACTICE BETWEEN INTERNATIONAL SALVAGE UNION
AND INTERNATIONAL GROUP OF P&I CLUBS

In the spirit of co-operation, the following Code of Practice is agreed between the International Salvage Union and the International Group of P&I Clubs in relation to all future salvage services to which Article 14 of the 1989 Salvage Convention is applicable or under Lloyd's Form where the Special Compensation P&I Club's (SCOPIC) Clause has been invoked by the Contractor.

1. The salvor will advise the relevant P&I Club at the commencement of the salvage services, or as soon thereafter as is practicable, if they consider that there is a possibility of a Special Compensation claim arising.

2. In the event of the SCR not being appointed under the SCOPIC clause, the P&I Club may appoint an observer to attend the salvage and the salvors agree to keep him and/or the P&I Club fully informed of the salvage activities and their plans. However, any decision on the conduct of the salvage services remains with the salvor.

3. The P&I Club, when reasonably requested by the salvor, will immediately advise the salvor whether the particular Member is covered, subject to the Rules of the P&I Club, for any liability which he may have for Special Compensation or SCOPIC Remuneration.

4. The P&I Clubs confirm that, whilst they expect to provide security in the form of a Club Letter either in respect of claims for special compensation (under Article 14 of the 1989 Salvage Convention) or SCOPIC remuneration (under the SCOPIC Clause), as appropriate, it is not automatic. Specific reasons for refusal to give security to the Contractor will be non-payment of calls, breach of warranty rules relating to classification and flag state requirements or any other breach of the rules allowing the Club to deny cover. The Clubs will not refuse to give security solely because the Contractors cannot obtain security in any other way.

5. In the event that security is required by a port authority or other competent authority for potential P&I liabilities in order to permit the ship to enter a port of refuge or other place of safety, the P&I Clubs confirm that they would be willing to consider the provision of such security subject to the aforementioned provisos referred to in para. 4 above and subject to the reasonableness of the demand.

6. The Contractors will accept security for either special compensation or SCOPIC remuneration by way of a P&I Club letter of undertaking in the attached form - "Salvage Guarantee form - ISU 5" - and they will not insist on the provision of security at Lloyd's.

7. The P&I Club concerned will reply to any request by the salvors regarding security as quickly as reasonably possible. In the event that salvage services are being performed under Lloyd's Form incorporating the SCOPIC clause, the P&I Club concerned will advise the Contractor within two (2) working days of his invoking the SCOPIC Clause whether or not they will provide security to the Contractor by way of a Club Letter referred to in para. 6 above.

8. In the event that salvage services are being performed under Lloyd's Form incorporating the SCOPIC clause, the P&I Clubs will advise the owners of the vessel not to exercise the right to terminate the contract under SCOPIC Clause 9(ii) without reasonable cause.

9. It is recognised that any liability to pay SCOPIC remuneration is a potential liability of the shipowner and covered by his liability insurers subject to the Club Rules and terms of entry. Accordingly, in the event of such payment of SCOPIC remuneration in excess of the Article 13 award, neither the shipowner nor his liability insurers will seek to make a claim in General Average against the other interests to the common maritime adventure whether in their own name or otherwise and whether directly or by way of recourse or indemnity or in any other manner whatsoever.

10. The P&I Clubs, if consulted, and the ISU will recommend to their respective Members the incorporation of the SCOPIC clause in any LOF.

11. This is a Code of Practice which the ISU and the International Group of P&I Clubs will recommend to their Members and it is not intended that it should have any legal effect.

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Appendix 2

Salvage Guarantee Form ISU 5

To:

Dear Sirs,

".............................................................................."Salvage
Lloyd's Standard Form of Salvage Agreement incorporating the
SCOPIC Clause dated ...........................................(the "LOF")

1. In consideration of, and upon condition that, you refrain from arresting or otherwise detaining
the .......................................................... or any other ship or property in the same beneficial or associated
ownership or management in connection with your claim for SCOPIC remuneration for services
rendered to the .............................................. under the terms of the LOF, we hereby undertake to
pay to you on demand any liability on the part of the owners for SCOPIC remuneration, together
with interest thereon and costs in relation thereto, which may be agreed in writing between
you, ourselves and the owners of the vessel in respect of which this undertaking is given or as
may be finally (in each case after the exhaustion of any appeals) found or adjudged to be due
to you from the owners pursuant to the arbitration provision contained in the LOF and any
appeals therefrom to the Courts.

2. Any monies paid by the undersigned hereunder shall be deemed to have been paid by the
undersigned as surety for the party or parties by whom your remuneration shall be payable
provided that, notwithstanding anything hereinbefore contained, the liability of the undersigned,
as between the undersigned on the one hand and you on the other hand, shall be that of a
principal debtor and the undersigned shall not be released by time being given or other
indulgence shown to the party or parties hereby guaranteed or by any other act, matter or
thing whereby the undersigned, if liable as a surety only, would or might have been released.

3. This undertaking shall be governed and construed in accordance with English law and we
undertake, when called upon to do so, to give irrevocable instructions to English solicitors to
accept service of proceedings issued on your behalf against us in relation to this undertaking.

4. Provided always that our liability hereunder shall not in any circumstances exceed (including
interest and costs) the sum of US$..................................................

Signed this ..........day of ....................